

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

.
BARBARA E. VARNER, .
Plaintiff, . CIVIL ACTION
 . NO. 1:CV 01-0725
vs. .
 .
COMMONWEALTH OF PENNSYLVANIA, . (JUDGE YVETTE KANE)
NINTH JUDICIAL DISTRICT, .
CUMBERLAND COUNTY; CUMBERLAND .
COUNTY; S. GARETH GRAHAM, .
individually, and JOSEPH .
OSENKARSKI, individually, .
Defendants. .
.

Deposition of: HON. HAROLD E. SHEELY

Taken by : Defendant Cumberland County

Date : February 25, 2003, 10:10 a.m.

Before : Emily Clark, RMR, Reporter-Notary

Place : Administrative Offices of
Pennsylvania Courts
5035 Ritter Road, Suite 700
Mechanicsburg, Pennsylvania

APPEARANCES:

DEBRA K. WALLET, ESQUIRE
For - Plaintiff

ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS
BY: A. TAYLOR WILLIAMS, ESQUIRE
For - Defendant Commonwealth of Pennsylvania
Ninth Judicial District, Cumberland County

THOMAS, THOMAS & HAER
BY: JAMES K. THOMAS, II, ESQUIRE
PAUL J. DELLASEGA, ESQUIRE
For - Defendant Cumberland County

APPEARANCES (continued):

MONTGOMERY, McCracken, Walker & Rhoads, LLP
BY: DAVID J. MacMAIN, ESQUIRE
For - Defendant S. Gareth Graham

SWEENEY & SHEEHAN, P.C.
BY: PAUL LANCASTER ADAMS, ESQUIRE
For - Defendant Joseph L. Osenkowski

ALSO PRESENT:

MS. BARBARA VARNER

MR. S. GARETH GRAHAM

I N D E X

WITNESS

Hon. Harold E. Sheely	Examination
By Ms. Wallet	4, 120
By Mr. Thomas	99
By Mr. MacMain	113
By Mr. Adams	118

EXHIBITS

Sheely Deposition Exhibit Number		Page
1	3-page memo, 7/11/97, to Ward and Deluce from Sheely	21
2	5-page memo, 4/25/97, to Hartnett from Varner	65
3	1-page memo, 7/17/97, to Ward and Deluce from Sheely	76
4	1-page memo, 7/8/97, to Sheely from Hartnett	84

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1 STIPULATION

2 It is hereby stipulated by and between the
3 respective parties that sealing, certification and filing are
4 waived; and that all objections except as to the form of the
5 question are reserved until the time of trial.

6

7 HON. HAROLD E. SHEELY, called as a witness, being
8 duly sworn, was examined and testified, as follows:

9 BY MS. WALLET:

10 Q. Good morning, Judge Sheely.

11 A. Good morning, Ms. Wallet.

12 Q. I'm Debra Wallet. I'm here representing Barbara
13 Varner in an action that has been brought against Mr. Graham,
14 Mr. Osenkarski, Cumberland County and the Ninth Judicial
15 District.

16 Is there any reason, sir, today, why you could
17 not answer my questions truthfully and completely?

18 A. Not to my knowledge.

19 Q. If at any time you do not hear me, may we please
20 have an agreement that you will ask me to repeat the
21 question?

22 A. I will.

23 Q. Or if at any time you don't understand my
24 question, can we agree that you will ask me to repeat that
25 question so that you do understand it before you attempt to

1 answer it?

2 A. I will.

3 Q. Tell me, sir, what preparation did you make today
4 for your deposition?

5 A. Yesterday I had a meeting with Attorney Williams
6 for several hours, and we went over generally who had
7 testified before and, I don't know, we just talked generally
8 about the case. I told her about my background, what I did
9 before, and --

10 Q. Did you review any transcripts?

11 A. I got several places I was given a transcript of
12 where I was named, I believe, by Mrs. Varner in her
13 deposition. I did see most of that.

14 Q. Okay. And did you review any documents in
15 preparation for today?

16 A. I think the documents I already had. I don't
17 think we reviewed any specific documents yesterday except the
18 deposition documents. That was it.

19 Q. Okay. Now, you said that you already had these
20 documents. Was there a file that you had taken with you when
21 you retired from the court?

22 A. No. This is all. The first thing I got was a
23 copy of the Complaint that was filed I see about April of
24 2001. At some point after that, why, I was given a copy of
25 the Complaint by Ms. Williams.

1 Q. And did you have any of the documents that you
2 had authored as part of this Complaint or charge?

3 A. No. The only thing that I have was given to me.

4 Q. Did you speak to anyone else who is a witness to
5 any of the facts involved in this case, prior to today?

6 A. I spoke to Judge Hoffer here several weeks ago,
7 when I found -- after I found out when I was supposed to
8 appear for a deposition I spoke to Judge Hoffer and asked him
9 if he was involved, and he told me, yes, he was going to have
10 a deposition, also.

11 As far as speaking to any of the other parties, I
12 have not.

13 Q. Okay. Have you seen any of the other parties
14 since your retirement?

15 A. I've seen Mrs. Graham. I've seen her since I
16 retired. I was at the courthouse several weeks ago and I saw
17 my former secretary and I saw some of the court reporters. I
18 stopped in the office there.

19 Q. Have you talked to any of those people about this
20 case?

21 A. No. I've tried to avoid that.

22 Q. And when you said you saw your former secretary,
23 which secretary was that?

24 A. Sandy Davis. I've only ever had two secretaries:
25 Mrs. Fry and Mrs. Davis.

1 Q. Would you tell me, sir, when did you first learn
2 that Barbara Varner had made some allegations of sexual
3 harassment?

4 A. You mean timewise? Probably somewhere around
5 June or early July of 1997, somewhere in that area, I
6 believe.

7 Q. And how did you learn it?

8 A. I learned it, one of the county solicitors had
9 made a call to my office wanting an appointment to see me,
10 and it was Mr. Deluce. And he did come in and see me. And
11 that was the first that I ever heard anything about these
12 problems between Mrs. Varner and Mr. Graham.

13 Q. Prior to that time, Mr. Osenkowski had not
14 brought this matter to your attention?

15 A. Not to my knowledge, no. I never knew anything
16 about it.

17 Q. Now, when Mr. Deluce called you to make an
18 appointment, did he tell you the purpose of his appointment?

19 A. I don't believe he did.

20 Q. And when you met with him, was it just the two of
21 you?

22 A. Yes.

23 Q. What did he tell you, sir?

24 MR. THOMAS: Objection. This is obviously
25 complicated a little bit. We do continue to assert the

1 attorney-client privilege with respect to Mr. Deluce, who was
2 a county solicitor. We would object to any questions asking
3 what the nature of the conversation was between counsel for
4 the county and the Court in this circumstance. It's a little
5 bit awkward because normally I would instruct the witness not
6 to answer the question, although in the circumstances of this
7 case I don't technically represent the judge.

8 MS. WILLIAMS: I join in the objection, and when
9 there is a question that infringes on the privilege I will
10 direct the deponent not to answer.

11 BY MS. WALLET:

12 Q. Did you understand my question, sir?

13 A. I understood the question but I understand I'm
14 not supposed to answer it; is that correct?

15 MS. WILLIAMS: Would you repeat the question?

16 BY MS. WALLET:

17 Q. What did Mr. Deluce tell you?

18 A. Am I supposed to answer that?

19 MR. THOMAS: Can we have one minute, Deb?

20 MS. WALLET: Sure.

21 (Recess taken from 10:16 until 10:20 a.m.)

22 MS. WALLET: I believe when we broke I had asked
23 my question and we were waiting for whether or not you would
24 instruct the witness not to answer the question.

25 MS. WILLIAMS: I am going to instruct the witness

1 not to answer the questions involving Mr. Deluce and the
2 conversation he had with him. And that's a continuing
3 objection as to any questions that go to conversations Judge
4 Sheely might have had with Mr. Deluce.

5 MS. WALLET: And the basis of your objection is
6 attorney-client privilege?

7 MS. WILLIAMS: It is attorney-client privilege.

8 MS. WALLET: Any other basis?

9 MS. WILLIAMS: No.

10 MR. THOMAS: And we obviously join in the
11 objection.

12 BY MS. WALLET:

13 Q. Judge Sheely, did you consider Mr. Deluce to be
14 your attorney?

15 A. No. I know he was of a firm that represented the
16 county.

17 Q. Describe for me the relationship between
18 probation officers who were employed by the court system and
19 the county employees.

20 A. At the time I became president judge in '83, at
21 that time the president judge handled all the dependence and
22 delinquency juvenile cases. Since I handled all them, I had
23 occasion on a weekly basis to see probation officers when
24 they brought either defendant juveniles or delinquent
25 juveniles into court. So I did see all of them, you know,

1 off and on on pretty much of a regular basis.

2 The other county employees I just would see as I
3 walked through the county. I knew who they were because I
4 had been in the DA's office for 12 years before I became a
5 judge, so I knew the other county employees but I really had
6 no direct relationship with them.

7 Q. Who did you have the ability to hire and fire in
8 the Probation office?

9 A. Any of the probation officers.

10 Q. Did you have the ability to discipline
11 individuals in that office?

12 A. I had the ability.

13 Q. Did you ever discipline any of them?

14 A. I'm just -- since you asked me that, in all the
15 years I was the president judge I think we only ever had one
16 probation officer that had to be disciplined, and he was
17 taking money on -- he was collecting money from people on DUI
18 cases, and he was terminated. But other than him, I don't
19 recall any other discipline problems that I had to get
20 involved in.

21 Q. Who was the person who was terminated?

22 A. I think it was Paul Meuron, if I recall.

23 Q. And you would have taken the action to terminate
24 him?

25 A. He did it -- yes, I would have, but he did it --

1 my recollection is he, after talking, he did it, he resigned
2 on his own.

3 Q. He resigned under threat of some termination?

4 A. I would say so, yes.

5 Q. Did you have the ability to set the hours of work
6 for the probation officers?

7 A. I did not.

8 Q. Did you have the ability to set a salary for the
9 probation officers?

10 A. I did not, no.

11 Q. How was that done, sir?

12 A. That was set by the county.

13 Q. And do you know, sir, was that simply an
14 agreement between the court and the county that you would use
15 the county compensation system?

16 A. Yes, I think that's correct. I had, I mean, when
17 we talked about people who were being, who were going to be
18 hired, why, we used the county pay scale for those people. I
19 didn't set it. I knew what it was at the time.

20 Q. Is that something that was just in Cumberland
21 County, or was that a statewide policy?

22 MS. WILLIAMS: If you know.

23 THE WITNESS: I don't know. I don't know. I
24 don't know what the other counties did.

25 BY MS. WALLET:

1 Q. As the president judge, sir, to whom did you
2 directly report?

3 A. I didn't report to anyone. I reported to the
4 Administrative Office of Pennsylvania Courts to some extent.
5 But as far as anyone in the county, I didn't report to
6 anyone.

7 Q. Do you know whether probation officers had a
8 county badge issued to them?

9 A. I don't know. I think they did.

10 Q. Do you know whether they were subject to the
11 rules and regulations, some sort of manual for county
12 employees?

13 A. They would have been subject to any rules or
14 regulations that the county had set for other employees, yes.

15 Q. Would you agree that they were sort of hybrid
16 employees; they reported to you, you had the ability to hire
17 and fire, but for basically everything else they were treated
18 like county employees?

19 A. I think that's probably --

20 MR. THOMAS: Objection to form.

21 THE WITNESS: Okay.

22 MR. THOMAS: You can answer, Judge.

23 MS. WILLIAMS: You can answer, yes.

24 THE WITNESS: Yes, I would say that's probably
25 correct.

1 BY MS. WALLET:

2 Q. Now, Mr. Deluce came to see you and told you for
3 the first time about these allegations that Ms. Varner had
4 made; is that correct?

5 A. Am I supposed to answer that?

6 MS. WILLIAMS: That falls within the objection
7 that we've articulated earlier as to the conversation between
8 Mr. Deluce and Judge Sheely and, therefore, I'm directing
9 Judge Sheely not to answer that question.

10 BY MS. WALLET:

11 Q. Did Mr. Deluce give you any documents at that
12 time?

13 MS. WILLIAMS: Hold on.

14 Objection to that question as well, Ms. Wallet.
15 We believe that goes to the privilege we've asserted, and I'm
16 going to direct Judge Sheely not to answer that question.

17 MR. THOMAS: We join in the objection.

18 BY MS. WALLET:

19 Q. As a result of this meeting with Mr. Deluce did
20 you do anything?

21 A. Yes.

22 Q. What did you do?

23 A. I wrote a letter to, a memorandum to, I believe
24 it was John Ward and to Mr. Deluce.

25 Q. Why did you write that memo?

1 A. I wanted them to know what action I had taken as
2 a result of the information I had at the time.

3 Q. After you met with Mr. Deluce but prior to
4 writing your memorandum, did you attempt to acquire any
5 information about the charges of Ms. Varner?

6 A. I'm sure I probably spoke to Mr. Osenkarski about
7 what I had heard. I don't recall any specific meetings, but
8 I'm sure I would have, because it involved his department.

9 Q. Is it your recollection, sir, that after you met
10 with Mr. Deluce you called Mr. Osenkarski and met with him?

11 A. I don't recall the specifics of calling him. I'm
12 sure I would have met with Mr. Osenkarski after I found out
13 about this.

14 Q. Do you recall whether it was just the two of you,
15 you and Mr. Osenkarski?

16 A. I'm sure it was, yes, at that time.

17 Q. What do you remember about that conversation?

18 A. I don't remember anything specifically about it.
19 Unfortunately, I don't remember any specifics.

20 Q. Well, do you think you said to him: I've learned
21 about something in your office?

22 MR. ADAMS: Objection. You're asking the judge
23 to speculate and it's not an appropriate question. Either he
24 knows or he doesn't know.

25 MS. WILLIAMS: You can answer, judge.

1 THE WITNESS: Would you ask me the question
2 again?

3 BY MS. WALLET:

4 Q. Did you say something to him such as: I've
5 become aware of a problem involving a probation officer?

6 A. I'm sure -- Ms. Wallet, I don't recall any
7 specifics, that's a long time ago, but I'm sure that I did.
8 That's why I would have went to see him, and I was trying to
9 find out what was going on at that time then between
10 Mr. Graham and Mrs. Varner as far as the office was
11 concerned.

12 Q. Do you remember what Mr. Osenkarski told you in
13 response to your questions?

14 A. Not specifically, no.

15 Q. Do you remember whether he made any comments
16 about the validity of Ms. Varner's charges?

17 A. I cannot honestly say that I remember any
18 specific remarks that Mr. Osenkarski made. It's been too
19 long a time.

20 Q. Did you make any notes of that meeting?

21 A. No.

22 Q. Do you recall anything about the meeting with
23 Mr. Osenkarski?

24 A. The only thing I can say at this time, and I'm
25 saying this from what I wrote in my letter of July 11th, I

1 think it was probably Mr. Osenkowski had told me that
2 Mr. Graham had used -- he had heard him use some abusive
3 language towards Mrs. Varner, some swear words. And I'm
4 certain that's who told me that. And that's the reason I
5 suspended Mr. Graham then for three days for any improper
6 language that he might have used. I'm sure it's
7 Mr. Osenkowski that told me.

8 Q. When you met with Mr. Osenkowski, did you have
9 any information at that time that there was an alleged affair
10 between Mr. Graham and Ms. Varner?

11 MR. THOMAS: Objection to the form. I'm not sure
12 his testimony was that he met with Mr. Osenkowski. I may
13 have misheard, but I thought his testimony was that he had a
14 conversation with him. He may answer.

15 MS. WILLIAMS: Go ahead, Judge.

16 THE WITNESS: I did not know anything about the
17 affair until sometime after Mr. Deluce came in and sometime
18 after I saw Mr. Osenkowski. Mr. Graham and his wife appeared
19 in my office and that's when I found out about the affair.

20 BY MS. WALLET:

21 Q. Okay. Well, let's clarify Mr. Thomas's
22 objection. Did you meet with Mr. Osenkowski, or did you just
23 have a conversation with him perhaps over the telephone?

24 A. I think I went down to the Probation office and
25 spoke to him down there. That would be my recollection.

1 Q. Would that have been customary for you to do,
2 rather than to call him to your office?

3 A. Yes. Very often I would walk down to the
4 Probation office. They were down on the third floor, I was
5 on the fourth floor. A lot of times I would just walk
6 directly down there if I had something to discuss with a
7 probation officer. If I didn't want anyone to hear what was
8 going on, why, I would call them up to my office, but other
9 than that, I would go down there quite often.

10 Q. So you think Mr. Osenkarski did confirm that
11 Mr. Graham used the F word?

12 A. I think he did, yes. That was the reason why I
13 felt that this type of thing should not go on and the reason
14 I suspended Mr. Graham for three days.

15 Q. Did you ask Mr. Osenkarski whether Mr. Graham
16 used any other language particularly toward the women in the
17 office?

18 A. No, I didn't ask him that, to my knowledge. He
19 obviously told me this or I wouldn't have known about it.

20 Q. Do you believe that you had information about the
21 use of the F word and you brought up the subject with
22 Mr. Osenkarski? Or did he bring that subject up to you?

23 MR. MacMAIN: Objection. He didn't say F word,
24 he said swear word.

25 MS. WALLET: I thought he did use the F word.

1 Well, let me be clear.

2 BY MS. WALLET:

3 Q. Did Mr. Osenkowski tell you that Mr. Graham used
4 the F word?

5 A. I think he did, yes.

6 Q. And my question, sir, was: Did you ask
7 Mr. Osenkowski: Have you ever heard this? Or did
8 Mr. Osenkowski volunteer that information?

9 A. I cannot answer that. I cannot accurately say
10 whether I asked him or whether he told me without being
11 asked, I don't know.

12 Q. What was your purpose in having this conversation
13 with Mr. Osenkowski?

14 A. My purpose primarily was, you know, I knew
15 Mr. Graham, I knew Ms. Varner for many years, and no employee
16 deserves to be abused or harassed by another employee. So
17 that's the reason I went down, to find out what I could. And
18 that was the reason I suspended Mr. Graham, because I felt
19 that by using this type of language that was not appropriate.

20 Q. Did you suspend Mr. Graham for any other reason?

21 A. No.

22 Q. Did you tell Mr. Graham why he was being
23 suspended?

24 A. I don't recall if I did or not. I'm just trying
25 to think who I -- I sent a copy of this letter to

1 Mr. Osenkarski. I don't know if he gave it to Mr. Graham or
2 not.

3 Q. Who decided on a three-day suspension?

4 A. I did.

5 Q. How did you decide that, sir?

6 A. Just decided that for using that type of
7 language, why, that he shouldn't have used, why, I felt that
8 the first time that would be an appropriate penalty for doing
9 that. And I thought that up on my own.

10 Q. Did you discuss that with anyone, specifically
11 anyone in the Human Resources Department at the county?

12 A. I don't think so. I think I did that on my own.

13 Q. At any time up until your retirement did you seek
14 any advice from anyone at the Administrative Office for the
15 Courts?

16 A. Advice? No.

17 Q. Did anyone in the Administrative Office for the
18 Courts give you any advice, whether or not you had solicited
19 it?

20 A. I don't recall. I don't think so. I wouldn't
21 say definitely they didn't, but I don't recall of any advice
22 ever given to me.

23 Q. Did you direct Mr. Osenkarski to do anything as a
24 result of the allegations that were brought by Ms. Varner?

25 A. In my letter, I think in my letter with better

1 supervision both parties can continue their good work in the
2 office, and I would -- up to this time I believe that
3 Mrs. Varner received her work assignments I guess from
4 Mr. Graham. And I directed that this type of relationship be
5 terminated and one of the other probation officers, Sam
6 Miller was supposed to work in the future with Mrs. Varner on
7 assignments and not Mr. Graham.

8 Q. And whose idea was that, sir?

9 A. I think it was mine. I don't think -- I don't
10 think Mr. Osenkarski is the one who set this up. In any
11 event, I thought it was a good way to do it. Either if it
12 was suggested by Osenkarski or me, I thought that the two of
13 them, with what was going on now, be better off to have
14 another PO involved with Mrs. Varner.

15 Q. And when you say what was going on, what do you
16 mean by that?

17 A. Well, what was going on in their relationship and
18 then in the office where these, that resulted in this
19 language being used. It's obvious that the two of them
20 weren't getting along, and that was -- they had always gotten
21 along well in the past.

22 Q. When you say "in my letter," are you referring to
23 your July 11 memorandum to John Ward and David Deluce?

24 A. Yes, that's correct.

25 Q. Let's mark that so that you and everyone else

1 have that in front of us.

2 A. I do have copy of that. I do.

3 (Sheely Deposition Exhibit No. 1 was marked.)

4 BY MS. WALLET:

5 Q. Judge Sheely, would you look at what has been
6 marked as Sheely Deposition No. 1?

7 A. I will.

8 Q. And is that what you referred to previously as
9 your letter?

10 A. It was.

11 Q. Do you recall writing anything else about the
12 subject Varner, Graham in Juvenile Probation other than what
13 has been marked as Sheely 1?

14 A. I don't recall of anything. It's possible maybe
15 that I did, but I don't recall.

16 Q. Had you met with Mr. Graham prior to writing
17 Sheely 1?

18 A. Yes. I had met with Mr. Graham and his wife.

19 Q. When did you meet with them in relation to this
20 July memorandum?

21 A. I can't honestly say that -- this was written
22 July 11th. I don't know if I met with them the same day or
23 the day before. I really can't answer that.

24 Q. When you met with Mr. and Mrs. Graham was there
25 anyone else present?

1 A. No. I think we were the only ones present. I
2 don't think their attorney was present on that occasion.

3 Q. Would you tell us what you remember about the
4 conversation between you and Mr. and Mrs. Graham?

5 A. Of course, I had no idea about any prior
6 relationship that was going on between Mrs. Varner and
7 Mr. Graham. Mr. Graham told me that he and Mrs. Varner had
8 been carrying on a relationship for some time. And I did
9 know that they used to make trips to George Junior Republic,
10 which was several hours away, and it always took two
11 probation officers to take juveniles out there. I knew that
12 this had taken place, but obviously I didn't know of any
13 relationship. So basically that's what he told me in the
14 presence of his wife, that he and Mrs. Varner had been
15 carrying on this relationship for some time.

16 Q. What else do you remember about the conversation?

17 A. That's about all it was about, this relationship
18 between he and Mrs. Varner.

19 Q. When the three of you met, where was this
20 meeting?

21 A. I believe it was in my office.

22 Q. Had someone asked to have this meeting with you?

23 A. Mr. Graham I'm certain asked to have the meeting.

24 Q. Was it during working hours or after working
25 hours?

1 A. I think it was during working hours.

2 Q. Did Mr. Graham tell you why he wanted to meet
3 with you?

4 A. I don't -- I don't know if he told me why. He
5 just wanted to tell me why he and Mrs. Varner had been having
6 these problems. I guess that's why he came in, that this
7 relationship had been terminated, the result of it was this
8 conflict between he and Mrs. Varner in the office.

9 Q. Well, did Mr. Graham at that time tell you he
10 knew that you were contemplating some disciplinary action
11 against him?

12 A. I don't recall if he told me that or not, but I
13 think he might have. I don't recall. I don't know when I
14 made up my mind about the three-day suspension, if I had told
15 Mr. Osenkowski that prior to writing the letter to him on
16 July 11th, or -- I don't really remember, if he knew about
17 that at that time or not.

18 Q. Well, when Mr. and Mrs. Graham came into your
19 office, did you think that that was unusual?

20 A. Yes, I sure did.

21 Q. Why was it unusual?

22 A. I never had Mr. Graham and Mrs. Graham in my
23 office before. Mrs. Graham had been my court reporter in
24 prior years, and obviously I knew her from that standpoint,
25 but I never had any prior meetings between the two of them in

1 my office.

2 Q. What did Mr. Graham tell you at that time?

3 A. He told me about, my recollection, about the
4 relationship, that he and Mrs. Varner had a sexual
5 relationship over a period of years, that they would stop in
6 motels, I think sometimes on their way from home from taking
7 juveniles out to George Junior Republic. I don't recall if
8 he mentioned any other places or not.

9 Q. What was your reaction to this?

10 A. I was really surprised, because I had always -- I
11 always had a good relationship before with Mrs. Varner and
12 Mr. Graham and I never had any idea that something like this
13 was going on.

14 Q. Well, did Mr. Graham say to you why he would come
15 to his superior and suddenly confess that he had had a
16 relationship?

17 A. I don't recall why he actually come in. I don't
18 recall the specifics of that. But apparently he had heard
19 something about something, and he wanted to come in and to
20 tell me about this.

21 Q. Was this an emotional meeting for the two of
22 them?

23 A. Yes, I think I remember it was. They were both
24 crying, I think, from time to time.

25 Q. Do you believe that prior to this meeting

1 Mrs. Graham had been told of the affair?

2 A. I don't think so. I don't recall any indication
3 that she knew about it before this.

4 Q. And what was her reaction to Mr. Graham's
5 statements to you about the affair?

6 A. Well, she was obviously upset. She was crying, I
7 know that. I remember that. Just like any other wife, I
8 guess, when you're told something like this.

9 Q. What did you say to them?

10 A. I don't recall what specifics I would have told
11 them. I'm certain that I told them I didn't approve of such
12 a relationship. And I knew they had children. I certainly
13 I'm sure told them that I hoped that they could get these
14 matters resolved, that they would not involve some type of a
15 separation that would certainly involve the children, if that
16 had to happen.

17 Q. Did you believe Mr. Graham when he told you that
18 he had had a sexual relationship with Ms. Varner?

19 A. Yes.

20 Q. Why did you believe him?

21 A. I guess I thought, you know, for a man to bring
22 his wife in to the president judge and admit to having a
23 sexual relationship with one of his co-employees in front of
24 his wife, that -- I don't think men would do that unless what
25 they're saying was true. That would be my thinking on that.

1 Actually, of course, I wasn't with him so I don't know. But
2 that would be my reason for believing him:

3 And also, you know, I know he and Mrs. Graham had
4 always had a good relationship. In fact, it was Mr. Graham
5 that I remember was really anxious to have Barbara hired, and
6 they had always had a good relationship, and I couldn't
7 believe that all of a sudden they were at each other or he
8 was at her or making comments or something in the office
9 unless there would be some reason for it. So that would be I
10 guess was why I believed him at that time as to what was
11 taking place.

12 Q. I believe you said that you thought that Gary
13 Graham and Barbara Graham had had a good relationship.

14 A. I'm sure they are. Both Barbaras are -- I meant
15 Barbara Varner. I know they did, over a period of years.

16 Q. Now, you said that you believed that Mr. Graham
17 had something to do with Ms. Varner being hired?

18 A. I remember that, yes.

19 Q. What do you remember about that?

20 A. The only thing I remember -- of course, I had to
21 approve it. Now, I wasn't initially involved in why she
22 wanted the job there, but I know, I can remember that
23 Mr. Graham definitely thought that she would be a good
24 employee for the county. I remember that.

25 Q. And do you recall whether you asked him his

1 opinion of Ms. Varner, or whether he came to you to offer
2 that opinion?

3 A. I don't remember how it came about. It certainly
4 came about, and whether the discussion was had between me and
5 Mr. Osenkowski and Mr. Graham, I guess, as to whether or not
6 she should be hired as a probation officer, I think he was --
7 thought she had done a good job, at least what he told me,
8 with Children and Youth Services.

9 Q. Had you had any association with Ms. Varner when
10 she worked at Children and Youth?

11 A. I'm certain that possibly she had some cases
12 involving me in court. I don't remember that specifically.
13 I can't say specifically.

14 Q. Is it your recollection that you really didn't
15 know Mrs. Varner at the time that you hired her into the
16 Probation office?

17 A. Just from seeing her around, I'm sure I saw her
18 around, because I think at the time they were on the third
19 floor of the courthouse, we were on the fourth floor, and I'm
20 sure Mrs. Varner might have had some cases before me. I
21 don't remember how many. I'm sure I knew who she was.

22 Q. Back to the time of the meeting between you and
23 Mr. Graham and Mrs. Graham. At that time did you have any
24 evidence other than Mr. Graham's statements that Mr. Graham
25 was having an affair with Ms. Varner?

1 A. No, I did not.

2 Q. Did he offer to you at that time, he, Mr. Graham,
3 offer to you at that time any evidence of this affair?

4 A. I don't recall of any evidence being offered. I
5 think he might have said that he thought he might be able to
6 get some motel receipts or something at that time, but I
7 don't -- I don't recall any evidence that was presented other
8 than what he told me at that time.

9 Q. Did Mrs. Graham confirm that she had believed an
10 affair was going on?

11 A. I don't recall any statements that she made, that
12 she felt before this meeting that her husband was having an
13 affair with anyone.

14 Q. Did Mrs. Graham ask you to do anything with
15 regard to her husband and his continued employment as a
16 probation officer?

17 A. I don't remember that, whether she asked me
18 anything or not.

19 Q. Did you tell Mr. and Mrs. Graham that you
20 intended to do anything to investigate these allegations of
21 an affair?

22 A. I don't recall.

23 Q. How long would you say that Mr. and Mrs. Graham
24 were in your office?

25 A. I don't recall that, either, really.

1 Q. Well, do you think it might have been five
2 minutes or fewer, or a half hour?

3 A. I would say, you know, if I was to guess I would
4 say a half hour, 45 minutes, maybe.

5 Q. During that half-hour conversation did you give
6 any assurances to either Mr. or Mrs. Graham that you would
7 take care of this matter?

8 A. I don't recall. I don't -- I don't recall.
9 Really, I couldn't do much about their marital relationship.
10 That was something that they had to work out and I couldn't
11 do anything about that.

12 Q. Did you make any suggestions to them about this?

13 A. I don't recall. I'm certain I told them I didn't
14 approve of what he was doing. I'm sure I would have said
15 that. But as far as working on their relationship, I don't
16 recall saying about that because that's something I couldn't
17 do anything about.

18 Q. Did you raise the issue of the use of the F word
19 by Mr. Graham during this meeting between the three of you?

20 A. I don't know if it come up in that meeting. I
21 think that I was told about the use of the F word by
22 Mr. Osenkowski, and I don't know exactly when that was. I'm
23 sure I knew it before I wrote the letter of July 11th, but I
24 don't know exactly when I found out about that.

25 Q. Do you remember anything else, sir, about the

1 meeting that you had in your office that lasted a half hour,
2 maybe 45 minutes, involving you, Mr. Graham and Mrs. Graham?

3 A. No, I don't think anything else other than what
4 I've already said.

5 Q. Did Mr. Graham cry during that meeting?

6 A. I think he did.

7 Q. Did Mrs. Graham cry?

8 A. I know she did, yes.

9 Q. Did you make any emotional reaction?

10 A. Not that I'm aware of. Obviously, I was very
11 sorry to hear that this was taking place with a family. I
12 dealt with the breakup of families for many years in my job
13 and I hate to see this take place. I'm certain I expressed
14 that feeling, anyhow.

15 Q. Now, was there another meeting at which
16 Mr. Graham was represented by an attorney?

17 A. Yes, there was. I know there was a meeting but I
18 don't know of anything that took place at that time. I
19 really don't recall. I didn't write anything about it. And
20 what took place at that meeting, I don't remember.

21 Q. Well, you listed on your July 11 memorandum David
22 Foster as attorney for Mr. Graham.

23 A. That's correct. David was the attorney who came
24 in with him at that time.

25 Q. Did you know that Mr. Foster represented

1 Mr. Graham prior to your writing this July 11 memorandum?

2 A. Yes, I think I did. I think they were in before
3 that time.

4 Q. And who was present at that meeting?

5 A. Just the three of us, to my recollection.

6 Q. You, Mr. Foster and Mr. Graham?

7 A. Yes.

8 Q. How did that meeting take place?

9 A. I think, well, it was at the request of either
10 Mr. Graham or Mr. Foster. I'm not sure which one of the two
11 requested the meeting, but it would be, it would have been
12 one of those two. I didn't call them in, that's for sure.

13 Q. And did whoever asked you for the meeting, tell
14 you what the subject would be?

15 A. No. They didn't tell me but I assumed it had
16 something to do with the problems between Gary and
17 Mrs. Varner.

18 Q. Why did you assume that?

19 A. Why? Because I didn't have any other reason they
20 would have been coming to see me. And obviously I had had
21 this meeting with Mr. Deluce prior to this, so I was aware of
22 some of the problems that there were.

23 Q. Did you meet with Mr. Graham, Mr. Foster and
24 yourself before the meeting with the two Grahams, or after?

25 A. I think it was before, but I wouldn't say that

1 for certain.

2 Q. Do you recall whether the meeting with you,
3 Mr. Foster and Mr. Graham occurred during regular business
4 hours?

5 A. Yes, I'm sure that it did.

6 Q. And no one else was there, just the three of you?

7 A. That's correct.

8 Q. But it happened in your office?

9 A. In my office.

10 Q. What do you remember, sir, about that
11 conversation?

12 A. I don't remember really what the specific
13 conversation was. I made no notes and did not write any
14 letters about it. Like I say, it's been so many years ago, I
15 really don't remember.

16 Q. Well, they asked for the meeting, so did one of
17 them start the conversation?

18 A. I really can't say, Ms. Wallet. I'm sure
19 Mr. Foster was the one who was asking me questions, but I
20 don't know really what they were or what my response was at
21 the time. I wrote no letters to Mr. Foster except the, I'm
22 trying to think, yeah, I sent him a copy of my July 11th
23 letter.

24 Q. Well, did Mr. Foster make some appeal to you on
25 behalf of Mr. Graham?

1 A. I don't recall any specifics. I'm sure he
2 probably did, that's the reason he was there, but as far as
3 making any specific request or getting information from me, I
4 don't recall that. He was there representing Gary, so I'm
5 certain he was trying to find out what I was proposing to do,
6 I guess.

7 Q. Did he ask you that?

8 A. I don't recall that, but I'm sure he probably
9 did.

10 Q. Did you respond?

11 A. If he asked me, I would have responded, yes, but
12 I don't recall specifically that taking place.

13 Q. And at that time do you recall what your
14 intention was with regard to some action against Mr. Graham?

15 A. Before I spoke with Mr. Graham and Mrs. Graham,
16 after speaking with Mr. Osenkarski, in addition to the
17 three-day suspension I considered transferring Mr. Graham to
18 Adult Probation, because that way then there would be not
19 very many problems with he and Mrs. Varner confronting or
20 working with each other in their office. That was one of my
21 considerations, yes, probably, at that time.

22 And at the time I spoke to them, I was, like I
23 say, I wasn't aware of any relationship, really, sexual
24 relationship that was taking place between Mr. Graham and
25 Mrs. Varner until he and his wife came in and told me about

1 it. So once I found out about what, when he and his wife
2 come in, I figured at that time that if they were having that
3 type of relationship I wasn't going to penalize him solely
4 for this type of conduct when both of them were involved in
5 it.

6 Q. Now, you said you considered a transfer.

7 A. Yes.

8 Q. Did you consider any other penalty?

9 A. No. That, and the suspension for three days, I
10 think that was all I was considering at that time. Plus, I'm
11 sure I told him at that time that, you know, people have to
12 work together and I would require that they be respectful
13 towards each other, and if he was doing this other type of
14 conduct, why, to have it stopped.

15 And I think I told Mr. Osenkowski, too, to keep
16 an eye on things and let me know if things developed after
17 that. And I don't think I ever heard anymore from
18 Mr. Osenkowski.

19 Q. Had you considered termination of Mr. Graham at
20 the time that you met with Mr. Graham and Mr. Foster?

21 A. No. I don't think I ever considered terminating
22 him.

23 Q. Why not?

24 A. Like I said, if he was, he and Mrs. Varner were
25 having a sexual relationship, I felt that why should he get a

1 more severe penalty than what she got. And really, she got
2 no penalty at all. That was my thinking.

3 Q. Well, now, my question, sir, was: At the time
4 that you met with Mr. Foster and Mr. Graham, I believe you
5 told me you didn't know of the sexual relationship?

6 A. No. I didn't know about it at that time, no.

7 Q. Okay. So at the time that you met with
8 Mr. Foster and Mr. Graham, had you considered termination?

9 A. I don't think I did, no.

10 Q. Why not?

11 A. Because I didn't think what information I had at
12 that time would certainly deserve terminating a person's
13 employment.

14 Q. And the information you had at that time was
15 solely the information that was given to you by Mr. Deluce?

16 A. I think that's probably correct, yeah.

17 Q. Would it have included your conversation with
18 Mr. Osenkowski, or not?

19 A. I don't recall.

20 Q. In any event, it was only those two things, the
21 information you had from Deluce and possibly the information
22 from Osenkowski?

23 MR. ADAMS: Objection. That's not what he
24 testified to. He said he didn't know. He referenced
25 Osenkowski.

1 MS. WALLET: I'm asking him.

2 BY MS. WALLET:

3 Q. Did you have any other information at that time
4 other than what you had received from Mr. Deluce and
5 possibly, although you're not certain, what you had received
6 from Mr. Osenkowski?

7 MR. ADAMS: Again, I'll object to as far as it
8 requires the judge to speculate, but he may answer.

9 MS. WILLIAMS: You may answer, Judge.

10 THE WITNESS: I don't recall of any other
11 information I had at that time.

12 BY MS. WALLET:

13 Q. Now, before you wrote your July 11 memorandum,
14 the one that's been marked Sheely 1, did you meet with
15 Ms. Varner to ask her for her response to the allegations
16 that there was a sexual relationship?

17 A. No.

18 Q. Why not?

19 A. To be truthful, I felt very disappointed that
20 Mrs. Varner didn't come to me initially about these problems
21 rather than running over to the personnel director for the
22 county. Mrs. Varner and I always had had a good
23 relationship, I thought she was a good probation officer, and
24 I felt really hurt that she wouldn't come to me and ask my
25 help in working with this problem rather than running over to

1 the personnel director for the county. I couldn't understand
2 why she did that, and she never asked to see me, that I
3 recall. She never asked for a meeting.

4 I knew at some point here that she had an
5 attorney, so I felt that it wasn't proper for me to call
6 Mrs. Varner in and ask her about this, when she had an
7 attorney. If she would have asked to see me, I certainly
8 would have seen her at any time. But I thought it wasn't
9 proper for me to ask her to come up and talk to me about this
10 once she had an attorney.

11 Q. Did you at any time consider inviting Ms. Varner
12 and her attorney to come in and talk to you about this?

13 A. No. I thought if they wanted to see me, I
14 certainly would have seen them. But I never got any calls
15 from anyone, either from her or her attorney that they wanted
16 to meet with me on this matter.

17 Q. Did you think it slightly irregular that you
18 would meet with one side of this controversy and not the
19 other side?

20 A. No, because I would have met with both of them,
21 but only the one side asked to come in and see me. The other
22 side didn't.

23 Q. Why did you believe that Ms. Varner knew that you
24 were about to make a determination?

25 A. I don't know why. I don't know why I thought

1 this. I don't know. But I was about --

2 Q. You thought at that time that Ms. Varner knew
3 that you were about to make a determination, and if she
4 wanted to talk to you, she should have contacted you?

5 A. Well, I know she could have contacted me at any
6 time on these proceedings, even before she went over to see
7 the county representative. I would have been happy to see
8 her at any time.

9 Q. Did the court, specifically you, have a sexual
10 harassment policy in place prior to July of 1997?

11 A. I did not have any policy, no.

12 Q. Do you know whether the county had a policy in
13 place?

14 A. I think they did.

15 Q. How did you know that?

16 A. I had been told that there was a policy, I think,
17 but they never -- I never adopted a separate policy because I
18 felt that that wasn't necessary.

19 Q. Why didn't you think it necessary?

20 A. I felt that any -- the policy of the county would
21 apply to all the employees, including the people in the
22 Probation office. And I think that the policy that they had
23 that I recall was certainly much -- thought out much better
24 than what I could think up of on my own.

25 Q. What did you understand the policy of the county

1 to be?

2 A. Well, they had a -- if there was a problem, they
3 had a step method of who the employees were supposed to
4 contact. That's about as much as I remember, because I never
5 really had to deal with this problem before. This is the
6 first time that it had ever come up to me.

7 Q. Okay. And what did you understand the step
8 method under the county policy to be?

9 A. All I remember is that someplace along the step
10 policy, why, Mrs. Varner should come in and talk to me about
11 this if she wasn't satisfied with the responses that she was
12 getting, I guess in this case it would have been the first
13 line of response would have been from Mr. Osenkarski. That's
14 what I thought. I never had to deal with this before. But I
15 think that's -- I mean, she could have came to see me first
16 or she -- the policy of the county was I believe she was
17 supposed to have seen Mr. Osenkarski, then to see me. But
18 she never did come to see me.

19 Q. All right. So you believed the policy to be that
20 if you had a problem with sexual harassment, let's say it was
21 your co-worker, what would you do?

22 A. My thought was, what I knew about it was that you
23 would first go to see your immediate supervisor of any type
24 of a problem, sexual or otherwise.

25 Q. Okay.

1 A. And they were probation officers. If they
2 couldn't get it resolved there, then they were supposed to
3 come to see me. Or they could have come to see me initially.

4 Q. So if Mrs. Varner had a problem with a co-worker,
5 she was to take that up with her immediate supervisor,
6 correct?

7 A. That's what I thought, yes.

8 Q. And in this case, who was that immediate
9 supervisor?

10 A. It would have been Mr. Osenkarski.

11 Q. Mr. Graham wasn't her immediate supervisor at
12 that time?

13 A. Well, he was a supervisor of some, to some extent
14 to my knowledge. But Mr. Osenkarski was the supervisor in
15 charge of all the Juvenile Probation delinquents and
16 dependents. He was in charge of the Probation Office.
17 Mr. Graham had some lesser position in Probation. I'm not
18 even sure at this point what that was.

19 Q. So you weren't aware in July of 1997 what the
20 relationship was between Mr. Graham and Ms. Varner from a
21 supervisory standpoint?

22 MR. THOMAS: Objection to the form.

23 You can answer.

24 MS. WILLIAMS: You can answer, yes.

25 THE WITNESS: I specifically at this time do not

1 recall what type of supervision Mr. Graham had over
2 Mrs. Varner prior to this taking place. I don't know if
3 Mr. Osenkowski had delegated certain responsibilities to
4 Mr. Varner over the other probation officers.

5 I read someplace or heard someplace here that
6 prior to this taking place that Mr. Graham apparently did
7 assign duties to Mrs. Varner. I don't know when I acquired
8 that information. I don't recall if I knew that before this
9 incident or not, really. I knew that he had some position in
10 the Probation Office but I wasn't sure what all this
11 entailed.

12 BY MS. WALLET:

13 Q. So today, you don't know whether in July of 1997
14 you knew that Mr. Graham had supervisory responsibilities
15 over Ms. Varner?

16 A. I don't recall today whether I knew that or not.

17 Q. In any event, you knew that Mr. Osenkowski had
18 supervisory responsibilities over Ms. Varner?

19 A. Definitely. Definitely.

20 Q. In July of 1997 did you know whether or not
21 Ms. Varner had taken her complaints to Mr. Osenkowski?

22 A. I didn't know that. I don't have any
23 recollection of being told that she ever went to see
24 Mr. Osenkowski.

25 Q. When you went to see Mr. Osenkowski before you

1 wrote your July 11, 1997 memorandum, did you ask
2 Mr. Osenkowski if Ms. Varner had brought to him any of her
3 complaints?

4 A. I don't recall if I did or not.

5 Q. Now, I'm back to the step method that you
6 identified under the county policy. If someone complained
7 about sexual harassment to the immediate supervisor and there
8 was no resolution that was satisfactory, where would that
9 employee go next?

10 A. As far as if they were in the Probation Office,
11 they would come to me.

12 Q. And how would someone know that?

13 A. I think that was on the county policy, that as to
14 how they were supposed to proceed. I think there was a
15 policy that the county had that would tell them how to do
16 this, I think.

17 Q. Did you know whether the county policy
18 recommended that someone make a complaint to the Human
19 Resources Department for the county?

20 A. I don't recall if I did or not. The reason I
21 don't know much about this is because I never had to deal
22 with this in all my years as president judge or working with
23 Probation. We never had this type of problem before. And I
24 had heard once about the county had adopted some policy on
25 this.

1 And the only thing I can recall is that they
2 would first go to their own supervisor. Then in the case of
3 Probation, I would be next in line and they would come to see
4 me. That's -- the rest of the policy, what it said, I really
5 don't remember because I never had to use it.

6 Q. Did you at any time ever tell Ms. Varner that she
7 shouldn't go to the county Human Resources Department with
8 her complaints?

9 A. I don't recall if I ever told her that or not. I
10 might have told her that I thought she should come to me
11 first to see if I couldn't get the matter resolved. I don't
12 think I ever told her not to go to any other place.

13 Q. Do you recall a conversation that you had with
14 Ms. Varner in the elevator area shortly before your
15 retirement?

16 A. No.

17 Q. Do you have any recollection of a conversation in
18 the hall with Ms. Varner shortly before your retirement?

19 A. No, I can't say really that I did.

20 Q. Did you believe that Ms. Varner had failed to
21 follow the sexual harassment policy with respect to her
22 complaints about --

23 A. I sure did. I sure did. I thought that Barbara
24 should have come to me, even initially, before she even went
25 to Osenkarski. But if she went to Osenkarski first and was

1 not satisfied, then I believe that she should have come to me
2 and I would hope that I could have had a meeting between she
3 and Mr. Graham and we would have got these matters resolved.

4 But like I said, I always thought Mrs. Varner was
5 a good probation officer. We never had any ill feelings
6 between us, and I would have certainly tried to look ought
7 for her interests if she would have given me the chance.

8 Q. Did you believe she violated the county sexual
9 harassment policy?

10 A. Yes, I believe she did.

11 Q. And that was because she didn't come to you?

12 A. Yes, ma'am, that's correct.

13 Q. Back to this meeting that you had with Mr. Graham
14 and Mr. Graham's attorney and yourself, do you recall
15 anything more about that meeting?

16 A. I do not. I don't recall any specifics from the
17 meeting. Obviously, I'm sure that Mr. Graham was there with
18 his attorney and his attorney was seeking information, but I
19 don't recall specifically what he was seeking or what I said.

20 Q. And did you believe that Mr. Foster on behalf of
21 Mr. Graham was seeking to influence you with regard to any
22 disciplinary action against Mr. Graham?

23 MR. THOMAS: Objection to the form.

24 MR. MacMAIN: Objection.

25 THE WITNESS: I don't recall what he said along

1 those lines. I would think that since he was representing
2 Mr. Graham he would try to intervene on his behalf the best
3 he could. But I don't recall any specifics as what he asked
4 me to do or what I would do or anything like that.

5 BY MS. WALLET:

6 Q. And during that meeting there was no statement by
7 Mr. Graham that he had had a sexual relationship with
8 Ms. Varner?

9 A. I don't recall him saying it at that time. My
10 recollection is that the first I was aware of this is when he
11 and his wife came in to see me.

12 Q. Do you recall a meeting with Mrs. Graham either
13 before or after this meeting with you, Mr. Graham and
14 Mrs. Graham, in which you discussed the matter of the sexual
15 relationship?

16 A. I know I didn't -- I know I didn't discuss
17 anything with her before this meeting between the two of them
18 because I didn't know anything about it.

19 Now, whether or not after this meeting with her
20 and her husband, whether or not I said anything to her about
21 this, I don't know. I might have. Like I say, she had been
22 my court reporter for many years and I always thought she was
23 a very nice lady, and I would certainly have tried to do
24 anything I could do to help. But I don't recall any specific
25 additional meetings that we had. It's possible maybe that we

1 did, but I don't recall that.

2 Q. Do you remember having any conversations with
3 Mrs. Graham after July 11, 1997, involving Mrs. Varner?

4 A. I don't recall any specific conversations with
5 Mrs. Graham after this July meeting. It's possible maybe
6 that I did, but I don't recall that.

7 Q. You said that this was your first experience with
8 an allegation of sexual harassment; is that correct?

9 A. That's my recollection.

10 Q. Were you aware of any complaints brought by a
11 probation officer named Kerry Houser?

12 A. There were no complaints made to me, I'm certain.

13 Q. Did you play any role in a complaint made by
14 Kerry Houser of a sexual harassment nature?

15 A. Can you tell me who this nature involved -- who
16 this alleged incident involved? Was it one of the other
17 probation officers?

18 MR. ADAMS: There's no question, your Honor. I
19 apologize. I'd rather you respond to her questions, if you
20 don't mind.

21 THE WITNESS: The answer to that would be no, the
22 nature of the question.

23 BY MS. WALLET:

24 Q. Okay. You don't remember any complaints that
25 Kerry Houser made about her supervisor?

1 A. Not to me, I don't, no.

2 Q. Were you ever aware of any complaints made by
3 Ms. Houser about the Probation Office?

4 A. I don't recall of any complaints, I really don't.
5 I'm not saying she didn't, but I don't recall of any.

6 Q. Do you know how long the county had had a sexual
7 harassment policy in place prior to July of 1997?

8 A. Exactly how long, no, I do not. I know that
9 there was a policy but I don't know how long it had been in
10 effect.

11 Q. Are you, sir, considered to be a county employee?

12 A. No, I'm not.

13 MR. ADAMS: Presently or in the past?

14 BY MS. WALLET:

15 Q. Let's have an --

16 A. I think she knows I'm retired.

17 Q. Let's have an agreement that when I ask you
18 questions here today, I'm really only talking about the
19 period up until you retired --

20 A. Yes I understand.

21 Q. -- and I believe that was the end of December of
22 1997 --

23 A. That's correct.

24 Q. -- correct?

25 A. That's correct.

1 Q. So may we have that agreement?

2 A. Yes.

3 Q. Did you receive a county employee handbook?

4 A. No, not to my knowledge.

5 Q. Sir, you served as a judge of what was then the
6 Court of Common Pleas of Cumberland County from 1983; is that
7 correct? Through 1997?

8 A. No. I was a judge since January 1, 1978. I
9 became the president judge when Judge Shughart had to resign
10 in 1983.

11 Q. And prior to your tenure on the bench, that is,
12 prior to 1978, what position did you hold?

13 A. I was a district attorney from 1968 to 1976. I
14 was an assistant district attorney from 1964 to 1968.

15 Q. And did you have employment in the practice of
16 law prior to 1964?

17 A. Yes. I think I was admitted to the bar around
18 1959. I graduated from law school in '58. And, of course,
19 in those days you could, even when I was district attorney
20 you could still have a private practice of law. It was not a
21 full-time position back at that time.

22 Q. Did you practice law between 1959 and 1964?

23 A. Yes.

24 Q. Where did you practice, sir?

25 A. In Shiremanstown.

1 Q. Was that a solo practice?

2 A. Yes, it was.

3 Q. And then after 1964, did I understand you to say
4 you continued with a part-time private practice and served in
5 the District Attorney's Office as well?

6 A. That's correct.

7 Q. Is the position of district attorney an elected
8 position, sir?

9 A. Yes.

10 Q. And you were elected to that position in 1968?

11 A. That's correct.

12 Q. And you were elected as a member of the
13 Republican party?

14 A. Yes.

15 Q. And you were elected to the position of judge at
16 some point?

17 A. That was in 1997.

18 Q. Okay. Were you appointed in January of '78?

19 A. No. I was elected and I took office in January
20 of '78. I was elected in November of 1977, I'm sorry. 1977
21 I was elected and I took office January 1, 1978.

22 Q. Thank you, sir. I think I managed to muddle that
23 a little bit.

24 And when you were elected to the bench, sir, were
25 you elected as a member of the Republican party?

1 A. Yes.

2 Q. Where did you do your legal training, sir?

3 A. Dickinson School of Law.

4 Q. And you graduated in 1958?

5 A. Yes. I got out of the Marine Corps in 1955 and
6 entered law school in September of 1955.

7 Q. Between 1968 and 1976 when you were the district
8 attorney, were you subject to the county employment policies?

9 A. Yes. Pretty much so, yeah. They paid my salary.

10 Q. And how about when you were an assistant district
11 attorney, from '64 to '68?

12 A. The county paid my salary during those years,
13 too.

14 Q. I guess my specific question was: Were you
15 subject to the county employment policies from 1964 through
16 and including 1976?

17 A. I was to the extent of my salary was paid by
18 them. The retirement policies of the county were -- I was
19 governed by them.

20 As far as my hours went, when I was an assistant
21 my hours were pretty much set by the district attorney. I
22 did not have any county policy as far as the hours I was
23 required to spend at that time.

24 Q. Do you know whether you had a county badge?

25 A. A what?

1 Q. A county identification badge?

2 A. No. I didn't have any bandages.

3 Q. And do you know whether you received any copies
4 of the county employment manuals during that period of time?
5 I'm speaking now between '64 and '76.

6 A. I knew we received information on our medical
7 benefits. I do know we received information as to how much
8 of our salary was being deducted, what retirement was being
9 deducted from that, those type of things. But as far as any
10 other policies go, I don't recall of any. Like I say, the DA
11 pretty much directed how I was to conduct my affairs at that
12 time.

13 Q. While you were an employee of the county
14 otherwise, did you receive any specific training in sexual
15 harassment?

16 A. No.

17 Q. Have you ever received any specific training in
18 sexual harassment?

19 A. No.

20 Q. Is that a subject that would have come before you
21 as a member of the Court of Common Pleas of Cumberland
22 County?

23 A. Is that a subject that would have come before me?
24 I mean, I was aware of what sexual harassment is, I think.
25 But as far as any specific training, I don't recall even as a

1 judge that we had any seminars on sexual harassment, at least
2 not to my knowledge.

3 Q. I guess my question not very artfully presented
4 was: When you were a judge, did you have any cases before
5 you that involved sexual harassment?

6 A. I'm sure -- we had a lot of criminal cases. I
7 don't know, I assume you mean where one party filed a civil
8 suit against someone? We didn't get involved in sexual
9 harassment suits. I think that pretty much was restricted to
10 federal jurisdiction, to my knowledge. I never had any civil
11 suits filed by one person against another person for sexual
12 harassment. I never did.

13 Q. Now, you knew Barbara Varner before she became a
14 probation officer, correct?

15 A. I knew her when she worked for Cumberland County
16 Children and Youth Services.

17 Q. Did you live near Ms. Varner at one time?

18 A. I don't know. I heard, I read someplace that she
19 had said that we were neighbors. Now, I don't know, I lived
20 at 14 South Center Avenue and I don't remember, really,
21 honestly, of knowing Mrs. Varner when she lived in
22 Shiremanstown. Her --

23 Q. Do you remember meeting her husband at that time?

24 A. No, I do not. Not at that time.

25 Q. So your only knowledge of Ms. Varner occurred

1 because of her employment with Children and Youth and in the
2 Probation Office?

3 A. I think basically that's correct. I lived next
4 to her ex-husband at one time, but -- and I knew of her then.
5 I met her son. But other than that, my knowledge of her was
6 very remote until she -- until I met her when she went to
7 work for the county.

8 Q. You said that you lived next to her ex-husband.
9 Was that at the same location?

10 A. That was at Mechanicsburg.

11 Q. Shiremanstown?

12 A. We lived in Shiremanstown 1961. We moved out of
13 Shiremanstown in 1993. In 1993 we moved to Mechanicsburg and
14 we bought our house in Mechanicsburg. And then later I found
15 out that her ex-husband, Ken Spidle, was our immediate
16 neighbor in Mechanicsburg.

17 Now, when Mrs. Varner lived in Shiremanstown, I
18 really don't know. Obviously, it must have been sometime
19 after 1961, but I don't ever recall meeting either she or her
20 husband at that time in Shiremanstown.

21 Q. Had you known Mr. Graham prior to his employment
22 with the county?

23 A. I don't believe I knew him. I knew his father.

24 Q. And how did you know Mr. Graham's father?

25 A. When I ran for district attorney, obviously that

1 was a political office. Mr. Graham's father was a Republican
2 committee man in Newville and that's how I knew his father.
3 But I don't remember of actually, I don't remember knowing
4 Gary Graham until he came to work for the county.

5 Q. Did you play any role in hiring Gary Graham?

6 A. I don't think so. I think he was hired by Judge
7 Shughart, as far as I remember. I had no role in that. I
8 was -- Judge Shughart was in charge of Probation at that
9 time. I don't think I had any role in hiring. I'm sure he
10 wouldn't have permitted me to do that, anyway.

11 Q. Had you known Mr. Graham's mother?

12 A. Yes, I did.

13 Q. How did you know her?

14 A. I knew her from some of the political meetings
15 that we used to go to. They used to have functions,
16 political functions, all the committee people would go and
17 other people in the Republican party, and I knew, I met his
18 mother through that.

19 I even knew one time I remember when she was very
20 seriously ill and she was in a place there near Mechanicsburg
21 and we went out to visit her. So I knew who she was, yes.

22 Q. Do you know whether Mr. Graham's father supported
23 you in your races for political office?

24 A. Yes, he did. I know that he did. I'm sure he
25 did.

1 Q. Do you recall how he supported you?

2 A. The committee people at that time would go around
3 town and try and get the people to come out and vote for you.
4 I think that's pretty much it. I never received any money
5 from him or anything like that.

6 Q. Do you recall whether Mr. Graham's father
7 supported you when you ran for both DA and for judge?

8 A. Yes, I'm sure he did.

9 Q. And was his mother active in politics in any
10 official capacity?

11 A. I don't recall of his mother ever being directly
12 involved, in any official positions, anyhow.

13 Q. Do you know whether she supported you in your
14 political efforts for district attorney or judge?

15 A. I would think she did, yes.

16 Q. Did you ever receive any correspondence from any
17 of the Graham family concerning their support of you
18 politically?

19 A. I don't recall of any specific correspondence,
20 but I was always felt that they did.

21 Q. How would you describe Gary Graham's personality?

22 A. I don't know how you'd describe it. I always
23 thought he was very capable, the same as Mrs. Varner, in
24 doing their jobs as a probation officer. I didn't have that
25 many dealings with him that I could really speak on what type

1 of personality he was.

2 Q. Did Mr. Osenkowski give you any information about
3 Mr. Graham's work or his behavior at work?

4 A. I don't recall if he ever gave me any direct
5 correspondence, no. About his work, no.

6 I knew, like I said, I had pretty close
7 relationships with all our probation officers. They were
8 involved in court proceedings. I'm the only one that did it.
9 So I really didn't need any information from Mr. Osenkowski
10 as to how well they were doing their jobs. I felt I knew
11 that. But other than that, I don't think he ever wrote to me
12 about anything.

13 Q. And you described both of them in your July 11,
14 1997 memorandum as excellent employees?

15 A. As far as I was concerned, they did their jobs
16 very well as probation officers, both of them.

17 Q. Did you know Mr. Osenkowski and Mr. Graham to be
18 good friends?

19 A. I think they were, yes.

20 Q. How did you know that?

21 A. Well, I started in the county in 1964 and became
22 DA in '68, and I think both of them at that time had or about
23 where they were hired at that time or -- I know that they had
24 worked together for many, many years, 20 years. So I know
25 that in all appearances to me they always got along very

1 well.

2 I think the timewise, Osenkarski I guess was a
3 senior man timewise in the Department. I believe Mr. Graham
4 was probably in the Juvenile section was probably second in
5 time, I think. There were other probation officers in Adult
6 that had maybe more time. So they worked very close together
7 and as far as I knew they were always good friends, yes.

8 Q. Would you say they were buddies?

9 A. I don't know of what they did after they left
10 work. I don't know that.

11 Q. Did you ever describe them as buddies?

12 A. I don't know. I don't recall saying that. I'm
13 sure they were, though.

14 Q. Do you recall referring to Mr. Osenkarski and
15 Mr. Graham as asshole buddies?

16 A. No. I don't recall that, no. I know they were
17 buddies. I don't recall ever saying they were asshole
18 buddies.

19 Q. Is that a term that you might have used?

20 A. I don't recall using it.

21 Q. Do you think you didn't use it?

22 A. Pardon me?

23 Q. Do you think you did not use it?

24 A. I don't think I actually referred to them in that
25 manner.

1 MR. ADAMS: Objection, asked and answered.

2 THE WITNESS: I know they were good friends.

3 BY MS. WALLET:

4 Q. You don't believe that you told Ms. Varner that
5 you thought Mr. Osenkarski and Mr. Graham were buddies or
6 asshole buddies?

7 A. I don't recall that, no. I'm certain if she
8 would have asked me, if it come up I would have certainly
9 said they were friends. I'm certain she knew that I knew
10 they were friends. But whether or not I ever used the word
11 asshole with it, I don't recall of ever using that.

12 Q. Now, you said she would know that you knew they
13 were friends. How would she know that?

14 A. Well, because I was, like I said, our office, the
15 judge's office was fourth floor, their office was third
16 floor. I was down there quite a bit and we would talk and be
17 together. I'm certain she saw that, Barbara saw that. So
18 I'm certain she realized we were all good friends.

19 Q. Did you know Mr. Graham to have a reputation for
20 being excitable?

21 A. Yeah, I knew that he was excitable sometimes. I
22 don't recall specifically how that came about, but he would
23 get excited sometimes, I think.

24 Q. Did you ever observe that?

25 A. I think I did probably. I don't recall specific

1 instances, but I think there might have been times when I
2 observed this. Not in his work but maybe on other things.
3 That would be my recollection.

4 Q. And what other things would those be?

5 A. I don't recall specifically how I knew this. I
6 just had that opinion that he would be excitable sometimes.
7 Just like anyone else when certain things would come up, he
8 might be excitable about them.

9 Q. Did you ever observe him to be loud?

10 A. I heard him talk loud already, yes, I'm sure I
11 did that.

12 Q. Did you observe him to be a hot head of sorts?

13 A. I don't recall observations of being a hot head,
14 no.

15 Q. Did you ever hear any complaints about
16 Mr. Graham?

17 A. You mean how he did his job as a probation
18 officer?

19 Q. Yes, sir.

20 A. No, I don't think I heard any specific complaints
21 about how he did his job.

22 Q. When you campaigned for office at one time did
23 you campaign against Sylvia Rambo?

24 A. That was a judicial election, yes.

25 Q. And when was that, sir?

1 A. That was in 1977.

2 Q. Were you aware of any allegations at that time
3 that Mr. Graham had made statements about Ms. Rambo?

4 A. No, not that I recall.

5 Q. Do you recall any controversy surrounding the
6 campaign of Ms. Rambo and Mr. Graham?

7 A. No, I don't recall any.

8 Q. You were aware, sir, that in or about July or
9 August of 1997, a couple of months before you retired, the
10 Probation Office was split into the Juvenile and Adult
11 Probation?

12 A. Yes. I think maybe that happened, I don't know,
13 I think maybe that happened in '96. I'm not really sure.
14 That's been -- that's when Mr. Bolze left, and at that time
15 we split the Adult and Juvenile in separate sections with
16 separate supervisors. I think it was in '96, although I
17 wouldn't swear to that.

18 Q. No matter whatever time it was, did you make the
19 decision to split those two offices?

20 A. Yes.

21 Q. And why did you make that decision?

22 A. At the time I believe I checked around and other
23 counties our size, I believe that's the way they had their
24 Probation Departments set up, separate Juvenile, separate
25 Adult. At the time I thought that administratively it would

1 be a much better way to do it rather than having one man at
2 the top and then having separate supervisors for Adult and
3 Juvenile. So that's the reason we did it.

4 Q. And why did you think it would be better not to
5 have just one person at the top?

6 A. I thought it would be better to have one person
7 responsible for Adult and one person specifically responsible
8 for Juvenile rather than having one guy at the top trying to
9 supervise both departments. That's what I thought.

10 Q. What was your relationship with Mr. Bolze?

11 A. It was an excellent relationship. Still do, as a
12 matter of fact, even as of this time. We're on the prison
13 board together.

14 Q. Did you have any problems with the way in which
15 he did his job?

16 A. Problems? No. I think the reason we split it up
17 was he resigned. He left the county as an employee and that,
18 at that time was when I decided to do this. I don't recall
19 thinking about this or making any decisions on this before he
20 left. He was always as far as I was concerned a very good
21 employee.

22 MR. MacMAIN: Debbie, can we take a short break?

23 MS. WALLET: Sure.

24 (Recess taken from 11:43 until 11:53 a.m.)

25 BY MS. WALLET:

1 Q. I believe when we took our break, Judge, we were
2 talking about the split between the Adult and the Juvenile
3 Probation Office. So it was your decision to do that split
4 after Mr. Bolze left?

5 A. That's correct.

6 Q. And you think that that was implemented
7 coincident in time with Mr. Bolze leaving, or sometime
8 thereafter?

9 A. I think it was probably sometime thereafter. I
10 don't remember the exact date when I split it in relation to
11 when the exact date was that he left.

12 Q. During the period of time that Mr. Bolze was the
13 director, was there an issue concerning how seniority should
14 be calculated?

15 A. I'm not sure --

16 MS. WILLIAMS: What do you mean by issue?
17 Perhaps you can clarify it.

18 BY MS. WALLET:

19 Q. All right. Do you recall there being a question
20 about whether probation officers should receive credit only
21 for the period of time that they worked in the Probation
22 Office, or whether they could also receive time for their
23 county service but outside the Probation Office?

24 A. I don't recall if there was a question or not.
25 It was my thinking now that we -- seniority was based pretty

1 much on the time they spent in the Probation Office and other
2 county time was not considered, as far as advancements in the
3 Probation Office. I think everything that I can recall was
4 done on seniority in the Probation Office.

5 Q. Do you remember any issue at all about the
6 relationship between county time and Probation Office time?

7 A. I don't recall any. We had very few employees
8 that did not come directly to Probation. I guess Mrs. Varner
9 came from other county employment, but I don't believe we had
10 too many other people that did that.

11 Q. Let me show you, I don't think we'll mark this
12 although it was already marked as Osenkarski Exhibit No. 8.
13 Let me show you a memorandum, sir, from Lyle Herr to Ken
14 Bolze dated January of 1996.

15 A. I've read the memo from Mr. Herr to Mr. Bolze.

16 Q. My question, sir -- let's trade, I'll give you
17 the one with the sticker -- having looked at this memorandum
18 does that refresh your recollection at all about the existing
19 policy and Mr. Herr's disagreement with that policy?

20 A. To my recollection, I never recall of this
21 memorandum from Mr. Herr to Mr. Bolze. I don't think it was
22 ever discussed with me.

23 Q. Do you think the issue of county time versus
24 Probation Office time was discussed with you by Mr. Bolze?

25 A. I can't say that I discussed it with him. It may

1 have been, but I don't remember.

2 Like I said, my feeling, my recollection was that
3 Probation, promotions in Probation were based on time in the
4 Probation Office and not considering other various employment
5 someone might have had.

6 Q. Did Ms. Varner ever come to you and raise a
7 complaint or an issue about seniority?

8 A. I don't recall of any such meeting.

9 Q. Did the issue of seniority come up at the split
10 between the Juvenile and the Adult Probation Office?

11 A. I think it did, yes.

12 Q. Do you recall how it came up?

13 A. Not really. I think that John Roller, who was
14 set up as the head of Adult Probation, and Mr. Osenkarski,
15 who was set up as head of Juvenile Probation, I believe they
16 were the two senior people in time and that's the reason they
17 were given those positions.

18 Q. And do you know whether they were the most senior
19 if we use county time together with Probation Office time, or
20 whether you just use Probation Office time?

21 A. To my knowledge it was just Probation Office time
22 that determined their seniority.

23 Q. After the split were you aware that the seniority
24 policy was different from --

25 A. I wasn't, no.

1 Q. So to the best of your recollection, nobody ever
2 brought this issue to you for resolution?

3 A. Not that I recall.

4 Q. Do you remember making any statements that if the
5 policy were changed, that the people would be grandfathered
6 into the old policy?

7 A. I don't recall that, no.

8 Q. Is it possible that you might have made such a
9 statement?

10 A. Anything's possible, but I don't recall it.

11 Q. In your mind it just wasn't an issue at all?

12 A. In my mind, now, no. My recollection is it
13 wasn't an issue, no. I know, like I said, that when the
14 offices were split, Mr. Osenkowski and Mr. Roller were set up
15 as the heads of those departments because of their seniority
16 in the Probation Office. They both had over 20 years, if I
17 recall.

18 MS. WALLET: Let's mark for identification as
19 Deposition Exhibit 2 a multiple-page document.

20 (Sheely Deposition Exhibit No. 2 was marked.)

21 BY MS. WALLET:

22 Q. Tell me when you're prepared to answer questions
23 about this memo.

24 A. Am I supposed to read it first?

25 Q. Well, I'm going to ask you if you ever saw this

1 memo.

2 A. I'm sorry?

3 Q. I'm going to ask you, sir, if you ever saw this
4 memo?

5 A. No, I never saw this.

6 Q. Were you aware, sir, in or about April of 1997
7 that Ms. Varner had made a written complaint concerning what
8 she called harassment or discrimination in the Cumberland
9 County Probation Office?

10 A. To the best of my recollection I was not aware of
11 such a letter.

12 Q. Were you aware of such a letter at the time that
13 you wrote your July 11 memorandum?

14 A. I don't think so. I don't think Mr. Hartnett
15 ever gave me a copy of this correspondence or let me know
16 that he had one.

17 Q. Let me show you what's previously been marked as
18 Barbara Varner Deposition Exhibit No. 16. Judge Sheely, tell
19 me when you're prepared to answer questions.

20 A. I'm prepared.

21 Q. I've handed you what has previously been marked
22 as Varner Deposition Exhibit 16. It's entitled" my solution
23 to the problem, from Barbara Varner to Dan Hartnett dated
24 April 25, 1997.

25 Do you recall seeing this memo before today?

1 A. No. I was never copied on that. I never saw it
2 before.

3 Q. Would that include the handwritten block in the
4 corner, Dan, Dave, Barb Varner?

5 A. I never saw that before, either. I was never
6 aware of that issue. Guns locked in our office, no. I never
7 saw that before.

8 Q. Thank you, sir.

9 Did you ever direct Mr. Osenkowski in or about
10 June of 1997 to prepare some kind of a corrective action plan
11 in response to allegations made by Ms. Varner?

12 A. I don't think I did. I think maybe in working
13 with Mr. Hartnett I think he, Mr. Osenkowski came up with a
14 plan.

15 Q. Let me show you what has previously been marked
16 as Osenkowski Deposition Exhibit No. 2.

17 A. Go ahead.

18 Q. Do you recall having seen Osenkowski Deposition 2
19 prior to today?

20 A. I don't recall it. It's directed to me. I don't
21 recall specifically when it was.

22 Q. Do you have any reason to believe today that you
23 didn't receive this memo?

24 A. No, I don't have that. I'm sure, it's directed
25 to me, it probably was given to me. I just don't recall

1 receiving it or anything else about it.

2 Q. Okay. What you got this memorandum which
3 referenced the current pending employee-related matter, did
4 you know what that matter was?

5 A. I was not aware of any problems between
6 Mrs. Varner and Mr. Graham until Mr. Deluce came into my
7 office. I'm not sure when that was. This I see is dated
8 June 30th. Whether or not that was after Mr. Deluce came to
9 my office, I would think probably it was. So I would, in
10 answer to your question, yes, I was probably aware at that
11 time of the problems between Mr. Graham as Mrs. Varner.

12 Q. All right. When you got this memorandum marked
13 Osenkarski Deposition Exhibit 2, what did you do?

14 A. I don't recall. I don't know if I did anything
15 or not. I see here that the recommendation was transfer
16 supervision of Mrs. Varner to someone else. I know that that
17 was taking place. But the other thing things, I don't recall
18 taking any action on them.

19 Q. In any event, you never asked Mr. Osenkarski to
20 prepare this document?

21 A. I never did. I think this was something that he
22 and Mr. Hartnett, the personnel director, had worked out.

23 Q. Did you do anything to stop Mr. Osenkarski from
24 implementing this plan?

25 A. My recollection would be no, I did not do

1 anything to stop it.

2 Q. He says in his second-to-the-last paragraph that
3 this was not a complete and final plan.

4 Do you know whether he provided anything further
5 to you after this June 30 memo?

6 A. I do not recall of any further memo being
7 provided to me.

8 Q. I note that page 2 of this document is dated July
9 3, 1997, and page is dated June 30. Do you know anything
10 about that?

11 A. No, I don't. I don't recall why they were
12 different dates.

13 Q. Did you know, sir, prior to July 11, 1997, that's
14 when you wrote your memorandum to Mr. Ward and Mr. Deluce,
15 that Ms. Varner had stated that she believed she had a fear
16 of retaliation or reprisal against her?

17 MR. THOMAS: Objection to the form.

18 THE WITNESS: I wasn't -- she never told me that.

19 BY MS. WALLET:

20 Q. And nobody ever told you that she had made that
21 allegation in writing?

22 A. Not that I recall.

23 Q. Did anybody tell you that she had alleged that
24 Mr. Graham had screamed at her?

25 A. I don't recall that. I don't think she ever told

1 that to me.

2 Q. Do you recall, sir, prior to July 11, 1997, that
3 Mrs. Varner had used the actual words "sexual harassment"?

4 A. I don't recall that.

5 Q. Did you know prior -- I'm sorry?

6 A. I'm sorry, go ahead.

7 Q. Did I interrupt you, sir?

8 A. No, that's fine.

9 Q. Did you know prior to July 11 of 1997 that she
10 alleged that she had been harassed and admonished by
11 Mr. Graham for taking her issues to Mr. Osenkarski?

12 A. I don't recall that being said. Again, she never
13 said that to me.

14 Q. And did you know prior to July 11, 1997, that
15 Ms. Varner had alleged that Mr. Osenkarski had washed his
16 hands of the matter and had stated to her he had put in, I'm
17 quoting now, fucking 35 years in and now Mr. Graham is in
18 charge.

19 A. I don't recall -- she never made that statement
20 to me, and I don't recall it being made.

21 Q. Did you know in or about July 11, 1997, that she
22 had used the terms "hostile work environment" in respect to
23 her time in the Probation Office?

24 A. I never recall that -- I don't recall that ever
25 being said to me, and I don't recall if she made that

1 statement to anyone else or not.

2 Q. Were you aware in July of 1997 that she alleged
3 she had been harassed by Mr. Graham because she had revealed
4 information concerning Mr. Graham and Mr. Osenkowski's
5 out-of-the-office activities?

6 A. I wasn't aware of that.

7 Q. Were you aware that she had made allegations
8 about use of county phones with respect to Mr. Osenkowski and
9 Mr. Graham?

10 A. They were never made to me, and I was not aware
11 that they were made.

12 Q. Were you aware at all in or about July of 1997
13 that Ms. Varner had made complaints of sex discrimination?

14 A. No. They were never made to me.

15 Q. Do you have the memorandum of July 11, 1997,
16 marked Sheely 1?

17 A. Yes, I do.

18 Q. You say in your memorandum that you had planned
19 to transfer Mr. Graham to Adult Probation and that you told
20 Dan Hartnett of this decision.

21 I assume that was an accurate statement at the
22 time that you wrote it?

23 A. I'm sure it was.

24 Q. Do you recall why you talked to Dan Hartnett
25 about your decision to transfer Mr. Graham?

1 A. Well, by this time I was aware that Mrs. Varner
2 had made her complaints to Mr. Hartnett, and that's probably
3 why I told him what I had been thinking about doing as far as
4 a transfer to Adult Probation.

5 Q. Do you recall when you told Mr. Hartnett of that
6 decision?

7 A. No, I don't. I see here I said I previously told
8 him, so it would have been sometime prior to July 11th.

9 Q. Do you know whether it was before you met with
10 Barbara Graham and Gary Graham?

11 A. I think it was before I met with them.

12 Q. Do you know whether it was before you met with
13 Gary Graham and David Foster?

14 A. I can't say that I knew that before, no.

15 Q. You said that you had received information that
16 if true, and I'm quoting now, would nullify in my judgment
17 any sexual harassment claim involved in this relationship.

18 My first question is: What information was that
19 that you believed would nullify your judgment about the
20 sexual harassment claim?

21 A. That was the information I received when
22 Mrs. Graham and Mr. Graham came into my office and the
23 information was told to me about the relationship between
24 Mr. Graham and Mrs. Varner.

25 Q. Anything else?

1 A. Not that I recall.

2 Q. And why did you believe in July of 1997 that that
3 information would nullify in your judgment any sexual
4 harassment claim?

5 A. Well, I felt that if this relationship between
6 Mr. Graham and Mrs. Varner had been going on over these
7 years, that for me to take all this corrective action against
8 Mr. Graham and not do anything with her, that that would not
9 be proper. She was involved, I thought, the same as he was.
10 And I didn't -- and at the time I had planned to transfer
11 Mr. Graham I didn't know about this relationship, and that
12 changed my mind.

13 Q. Did you believe that a sexual relationship
14 between co-workers would necessarily cause you to impose
15 disciplinary action?

16 A. No. If it wasn't brought to my attention, what
17 they did on their own time, that was their own business.

18 Q. And what was it about this particular
19 relationship of a sexual nature that would cause you to
20 potentially take disciplinary action against Ms. Varner?

21 MR. THOMAS: Objection to form.

22 MS. WILLIAMS: Objection.

23 THE WITNESS: Really, I didn't take any
24 disciplinary action against Mrs. Varner. I did nothing --
25 she kept her job, she got no time off. To my knowledge, I

1 didn't do anything as far as Mrs. Varner was concerned.

2 BY MS. WALLET:

3 Q. Well, if I understand your testimony, you said
4 you were going to take more action against Mr. Graham?

5 A. That's right. I was going to do that before I
6 found out about this relationship.

7 Q. And then you found out about the relationship and
8 you changed your mind.

9 A. That's what I did, yes.

10 Q. And the reason was you didn't think it would be
11 fair to punish one but not Ms. Varner?

12 A. That was part of it, yes.

13 Q. Did you think that Ms. Varner would be deserving
14 of some disciplinary action as a result of this alleged
15 relationship?

16 A. Not really. But I didn't think because of the
17 relationship that he was, either.

18 Q. You mentioned that you thought with better
19 supervision in Juvenile Probation that both of these people
20 could continue to work there.

21 What did you do to ensure that there would be
22 better supervision in this department?

23 A. I think based on my discussions with
24 Mr. Osenkowski, I wanted him to be more personally involved
25 in this relationship, and if there were any further problems,

1 to let me know. And I don't recall of hearing any further
2 problems.

3 As I said, both of these parties are college
4 graduates, they're adults, and I feel that they ought to be
5 able to treat each other decently in their work relationship,
6 and I was hoping that that's what would take place after all
7 this, after all this was done by me. And I wanted
8 Mr. Osenkarski to supervise this and if there was any other
9 problems, to let me know. And that's what I did.

10 Q. Do you recall what you told Mr. Osenkarski to do?

11 A. No, I don't recall what I told him to do. I felt
12 that he would be able to act on his own on any problems that
13 later developed then between Mrs. Varner and Mr. Graham.

14 Q. Judge Sheely, did you have any information in
15 July of 1997 that Ms. Varner had acted in any way improperly
16 toward Mr. Graham in the workplace?

17 A. I don't recall of any information that I had that
18 she had acted improperly towards him.

19 Q. Did you have any allegations that she yelled at
20 him?

21 A. No, I wasn't aware of that.

22 Q. Did you have any allegations that she used foul
23 language?

24 A. No, I never recall hearing those allegations.

25 Q. Did you have any allegations at that time that

1 Ms. Varner had acted unprofessionally in any way in the
2 workplace?

3 A. I'm just trying to think. To my recollection,
4 no. I don't recall of any.

5 Q. You decided to suspend Mr. Graham for three days,
6 July 25, 26 and 27. Correct?

7 A. That's what this says here, yes.

8 Q. Did you decide on those three days?

9 A. Yes, I did at the time, I decided on those days.

10 Q. How did you decide on those days?

11 A. I don't recall.

12 Q. Did you consult with Mr. Osenkarski about whether
13 or not Mr. Graham could be out of the office for those days?

14 A. I really don't recall doing that but I think I
15 probably did. I would certainly let him know what I was
16 going to do. And he got a copy of this letter, so he knew
17 it.

18 Q. Do you recall, sir, that eventually the effective
19 dates of the suspension was changed?

20 A. I don't recall that, no.

21 MS. WALLET: Let me hand you what we'll marked as
22 Deposition Exhibit 3.

23 (Sheely Deposition Exhibit No. 3 was marked.)

24 MS. WALLET: I've handed the witness what we've
25 marked as Sheely deposition No. 3, which I'm told is the same

1 as Varner Deposition No. 3.

2 BY MS. WALLET:

3 Q. Do you recall seeing that, sir, prior to today?

4 A. No, I don't recall seeing it.

5 Q. Those are your initials?

6 A. They certainly are, yes.

7 Q. Okay. Do you have any reason to believe you
8 didn't issue this memo in or around July 17, 1997?

9 A. No. I'm satisfied that the information on the
10 memo is correct.

11 Q. Do you have any recollection as to why you
12 changed the dates of the suspension?

13 A. No, I do not.

14 Q. You said in your July 11 memo that you were not
15 in a position to hold a hearing with witnesses under oath.
16 Why did you say that?

17 A. When I wrote this I then knew that both parties
18 were represented by attorneys, and I felt at that time that I
19 was not in a position, for instance, to order Mrs. Varner to
20 come in and be subject to questioning by me as to what had
21 taken place. And I was not going to order Mr. Graham to come
22 in and talk to me without his attorney being present, either.

23 So that's what I meant by that, that I'm not in a
24 position to hold any hearings because now both parties are
25 represented by attorneys, and for me to order them to come in

1 I thought would certainly have been improper.

2 Q. They both worked for you, correct?

3 A. They sure did, yes. And I would have been happy
4 to speak with either one of them, which I did speak to
5 Mr. Graham, if they wanted to come in and see me. But I felt
6 it was improper for me to order them to come in when they had
7 counsel in this matter.

8 Q. How did you know that Ms. Varner had counsel?

9 A. I knew that at the time because I copied you. I
10 don't recall specifically how I knew that she was represented
11 by you, but I certainly did at the time I wrote this memo.

12 Q. Did you believe that a copy of this memo was sent
13 to me in or about July 11 of 1997?

14 A. I assume. I would believe that anybody that was
15 copied would have gotten a copy of this.

16 Q. And you would have delegated that to your
17 secretary?

18 A. I would think my secretary would probably have
19 done that. She usually did.

20 Q. Who was your secretary at this time?

21 A. Sandy Davis.

22 Q. Did you have any discussions with Sandy Davis
23 about the investigation into the allegations of Ms. Varner?

24 A. I probably did have some discussions with her. I
25 don't recall when and what they were, but she was my

1 secretary and I'm certain that she typed up this memo, I
2 guess, and I'm certain I would have discussed matters with
3 her, yes.

4 Q. What do you recall saying to Sandy Davis about
5 this matter of the allegations made by Ms. Varner?

6 A. I don't recall any specific discussions I had
7 with her about that.

8 Q. Did you talk with her about the possibility of
9 disciplining Mr. Graham?

10 A. I don't recall if I spoke specifically with her
11 about that issue or not. If she typed this memo I'm certain
12 she saw it on there.

13 Q. Do you know whether Ms. Davis had access or
14 otherwise read the Deluce memo?

15 A. No, I'm sure she didn't, because I never got a
16 copy of it, either. I read it but he never gave me a copy,
17 to my knowledge.

18 Q. And you believe he gave that to you personally by
19 handing it to you?

20 MR. THOMAS: Objection to form. That misstates
21 his testimony. He said he never had a copy. He said he read
22 it. He didn't have a copy.

23 BY MS. WALLET:

24 Q. So Mr. Deluce at some point handed you a
25 document, you read it and then you gave it back?

1 A. That's my recollection, yes. I know I never had
2 that in my file.

3 Q. Did you know, sir, prior to today that
4 Mr. Osenkowski had testified to a conversation he had with
5 Sandy Davis regarding this matter?

6 A. No, I did not. I don't recall that.

7 Q. Did you know at any time that Sandy Davis had had
8 a conversation with Mr. Osenkowski regarding these matters?

9 A. I don't know that as a fact, no.

10 Q. Did Sandy Davis discuss with you the allegations
11 of Ms. Varner against Mr. Graham?

12 A. Not to my knowledge.

13 Q. Did she give you any advice about this
14 allegation?

15 A. No, not to my knowledge.

16 Q. Did you ask her about this matter?

17 A. Not to my knowledge. I wouldn't think I would
18 ask my secretary for some information on something like this.

19 Q. Did Mr. Osenkowski ever say to you: Sandy Davis
20 told me that I might be dismissed as a result of this
21 allegation of Ms. Varner's?

22 A. I don't recall such a statement ever being made
23 to me.

24 Q. You have absolutely no knowledge of any
25 conversation between Sandy Davis and Mr. Osenkowski regarding

1 these allegations?

2 A. No, I have no recollection of any such
3 conversation.

4 Q. Sir, at any time did you hire anyone to
5 investigate the allegations that were made by Ms. Varner
6 against Mr. Graham?

7 A. No.

8 Q. Did you assign to anyone the responsibility to
9 investigate these complaints by Ms. Varner against
10 Mr. Graham?

11 A. No.

12 Q. Did you yourself engage in any investigation of
13 these allegations of sexual harassment by Ms. Varner against
14 Mr. Graham?

15 MR. THOMAS: You mean other than the things he's
16 already testified to?

17 MS. WALLET: Correct.

18 THE WITNESS: In addition to those things? No.

19 BY MS. WALLET:

20 Q. Well, did you consider any of those things to be
21 the assignment of an investigation?

22 A. No. I thought it was no obligation on me to
23 investigate any further than the information I already had.

24 Q. And the information was what you had gotten from
25 Mr. Deluce, what was told to you by Mr. Osenkarski, and what

1 had been told to you by Mr. Graham?

2 A. I think that was basically it, yes.

3 Q. Other than the discussion that's referenced in
4 the July 11, '97, memo, Sheely 1, this conversation with Dan
5 Hartnett, did you have other conversations with Mr. Hartnett
6 about this matter?

7 A. I don't believe.

8 Q. Would that include the period after July 11,
9 1997?

10 A. I don't recall of any specific conversations I
11 had with Mr. Hartnett. He got a copy of this memo. I don't
12 recall any further ones, either conversations or memos.

13 Q. Did you have any conversations with Mr. Deluce
14 after July 11, 1997?

15 A. I don't believe.

16 Q. Your memo says that you met with Mr. Graham on
17 July 9, 1997, when he came to your office. Do you have any
18 reason to believe that that's not an accurate date?

19 A. I don't. I'm sure at that time I knew when July
20 9th was, I would assume it would have been accurate.

21 Q. And was that the meeting that you described
22 earlier between you, Mr. Graham and Mrs. Graham?

23 A. I don't -- I can't say that that was the date. I
24 really don't remember. It could have been. I think that's
25 probably correct.

1 Q. Do you have any reason, sir, today to believe
2 that your statement in the next sentence that you spoke with
3 Mr. Graham and his attorney on Thursday, July 10, 1997, at
4 their request, is inaccurate?

5 A. No, I think it's accurate.

6 Q. Do you have any explanation, sir, as to why there
7 was a delay between April when Ms. Varner made her Complaint,
8 and when you issued your memorandum in July of '97?

9 MR. ADAMS: I'm going to object. I don't know
10 that any evidence has been presented that Ms. Varner made her
11 complaint in April of that year.

12 MS. WALLET: Well, I think we've already marked
13 the Varner memo of April 25, 1997.

14 MR. ADAMS: Okay.

15 MS. WILLIAMS: I'll object, because the judge has
16 already testified that he had no knowledge of that memo.

17 BY MS. WALLET:

18 Q. This is a different question, sir. My question
19 is: Do you have any knowledge as to why there was a delay
20 between the time that Ms. Varner made her Complaint in April
21 and when you issued your memorandum in July?

22 MR. THOMAS: Objection to form.

23 THE WITNESS: No, I have no idea about that.
24 That was a matter between the county and the county attorney,
25 and so I don't know why the delay was.

1 BY MS. WALLET:

2 Q. Did you make any recommendation that
3 Mr. Osenkarski receive any disciplinary action?

4 A. No.

5 Q. Do you know whether anyone else made a
6 recommendation that Mr. Osenkarski receive disciplinary
7 action in or around July of 1997?

8 A. I think I just saw this memo from Ms. Varner, she
9 made the recommendation to Mr. Hartnett.

10 Q. Did anyone else make such a recommendation
11 regarding discipline of Mr. Osenkarski?

12 A. Not to my recollection.

13 MS. WALLET: Let's mark as Deposition Exhibit 4 a
14 one-page memo.

15 (Sheely Deposition Exhibit No. 4 was marked.)

16 THE WITNESS: I've read it.

17 BY MS. WALLET:

18 Q. Do you recall having seen this memorandum prior
19 to today?

20 A. I don't recall seeing it.

21 Q. Do you have any reason to believe that you didn't
22 get this memo in or about July of 1997?

23 A. I don't know if I got -- I have no recollection
24 of ever getting this.

25 Q. This references a meeting and it says involving

1 you, and I take that to mean you, Judge Sheely, Dave Deluce,
2 John Ward, and Mr. Hartnett. Do you recall that meeting?

3 A. No, I do not.

4 Q. Do you have any reason to believe you didn't have
5 such a meeting?

6 A. I don't recall it. Whether or not there was one,
7 I don't recall.

8 Q. The memo goes on to say: We are in agreement
9 with your position involving a suspension of Mr. Osenkowski.

10 Did you ever take the position that
11 Mr. Osenkowski should be suspended?

12 A. I never recall making a statement to Dan Hartnett
13 that I recommended that Mr. Osenkowski be dismissed. I don't
14 recall making such a statement.

15 Q. Well, the question, sir, wasn't that he be
16 dismissed, but rather, that he be suspended.

17 A. I don't recall ever making a statement to
18 Mr. Hartnett that I felt Mr. Osenkowski should be suspended.

19 MR. ADAMS: Can we go off the record for a
20 moment?

21 (Discussion held off the record.)

22 BY MS. WALLET:

23 Q. Do you have any recollection, sir, of any
24 discussion regarding sending Mr. Osenkowski to an Employee
25 Assistance Program?

1 A. No, I do not.

2 Q. Do you believe that you took some action after
3 you received this July 8, 1997, memorandum?

4 A. Involving Mr. Osenkarski?

5 Q. Or anyone.

6 A. I don't recall ever taking any action against
7 Mr. Osenkarski.

8 Q. Well, you got this memo after you got this memo
9 that said we agree with your position involving suspending
10 Mr. Osenkarski. Did you ever fire back a memo saying: I
11 never recommended that?

12 A. No, I never --

13 MR. THOMAS: Objection to the form and the
14 characterization. What the sentence says is: We are in
15 agreement with your position involving a suspension of
16 Mr. Osenkarski. It doesn't say that Judge Sheely advocated a
17 suspension, necessarily; merely that apparently the writer
18 was in agreement with the judge's position. I don't want you
19 to mischaracterize the document.

20 BY MS. WALLET:

21 Q. My question, sir is: Did you take some action
22 after this July 8, 1997, memo to either clarify your position
23 or to correct it in some fashion?

24 A. I recall no action being taken by me.

25 Q. Did you express a position regarding the

1 suspension of Mr. Osenkarski in or about July of '97?

2 A. I don't recall making such a statement, no.

3 Q. Do you recall anybody recommending to you that
4 Osenkarski be suspended?

5 A. I don't recall. It's possible. I don't recall.

6 Q. Do you know whether Gary Graham was suspended for
7 three days?

8 A. I don't know for sure. I assumed that he was.

9 Q. Why do you assume that?

10 A. Because I directed that he be suspended for three
11 days. I possibly checked up on it at the time, but I don't
12 recall now knowing for sure that he served his three days or
13 not.

14 Q. When you directed that Mr. Graham be suspended
15 for three days, was it your intention that he lose pay for
16 three days?

17 A. Pardon me?

18 Q. Was it your intention, sir, that he lose pay for
19 three days?

20 A. I don't recall if that was my intention or not.
21 I didn't put it on there, so I don't recall if he lost three
22 days' pay or not.

23 Q. Did you believe that your directions would be
24 carried out if he was suspended but he continued to be paid?

25 A. My direction was that he be suspended without

1 pay. I would assume that this was done, although I never
2 checked on it to see whether that was done or not.

3 Q. And who would have had responsibility for doing
4 that, sir?

5 A. That would have been from the controller's office
6 in the county, they would deduct the three days' pay. I
7 would assume that's how it would have been done.

8 Q. Would Mr. Osenkowski as Mr. Graham's direct
9 supervisor have had some responsibility for that?

10 A. He would have to notify the controller's office
11 to deduct three days' pay from Mr. Graham.

12 Q. And you don't know whether that ever happened?

13 A. I don't recall of ever following that up or not,
14 no, I don't.

15 Q. After your July 11, '97, memorandum, did you hear
16 anything more about Ms. Varner's allegations?

17 A. No, I don't recall. I thought that the
18 appointment of Mr. Miller to work with Barbara in the office
19 as far as her assignments are concerned, and I hoped that
20 there would not have been any further problems between she
21 and Mr. Graham. So I don't recall of any further complaints
22 about what was taking place between she and Mr. Graham.

23 Q. After July of '97 did you ever go to
24 Mr. Osenkowski and ask him how things were going?

25 A. I cannot honestly say at this time whether I did

1 or did not.

2 Q. Did you tell Ms. Varner that you were preparing
3 to issue the memorandum of July 11, 1997?

4 A. I don't recall making any statement to her that I
5 was preparing to do this.

6 Q. Did you see her at all in or around July 11 of
7 1997?

8 A. I don't recall seeing her. I don't recall.

9 Q. Do you recall telling Ms. Varner that Mr. and
10 Mrs. Graham had made a tearful confession to you about the
11 extramarital relationship between Mr. Graham and Ms. Varner?

12 A. No, I don't recall telling Mrs. Varner that, but
13 what you said was truthful.

14 Q. You don't recall any conversation in which you
15 told her that they were both crying and that --

16 A. I don't recall such a conversation, but what you
17 said is truthful, but I don't recall telling her that.

18 Q. Did you ever tell Ms. Varner that she would just
19 have to put up with the environment in the Probation Office?

20 A. I don't recall saying that.

21 Q. Judge, do you recall having any conversations
22 with Ms. Varner between July of '97 and when you retired from
23 county employment in December of '97?

24 A. No, honestly I cannot say that I recall any
25 conversations with Mrs. Varner. I may have, but I don't

1 recall any.

2 Q. When you retired in December of '97 did you think
3 that this whole matter of Ms. Varner's allegations had been
4 resolved?

5 A. I think I did, yes, basically. I don't think I
6 heard anymore for a period of months that there was any
7 additional problems.

8 Q. Do you recall hearing that Ms. Varner had filed a
9 charge at the Human Relations Commission or at the EEOC
10 regarding these matters?

11 A. I think I did, but I can't recall when I received
12 that information. And I don't think it was while I was still
13 a judge, I don't think. I don't know when those charges were
14 filed.

15 Q. You think you might have learned of this after
16 you had already retired?

17 A. That's what I think.

18 Q. Did you keep any kind of a file on Ms. Varner's
19 allegations?

20 A. No, I did not. Like I say, I never received any
21 direct allegations from Mrs. Varner, to my knowledge.

22 Q. Do you know where in your office you would have
23 filed the July 11, 1997, memorandum?

24 A. No, I don't.

25 Q. Did you think that your involvement in this

1 matter was finished when you issued the July 11, '97, memo?

2 A. I was hoping that it would be finished.

3 Q. And what would happen that would cause you to
4 believe that you weren't finished?

5 A. That I was finished or was not finished?

6 Q. Not a good question. Let me strike that and try
7 again.

8 You hoped, you said, that your involvement was
9 finished.

10 A. Yes.

11 Q. What actions or circumstances after July would
12 cause you to become re-involved?

13 A. I don't recall being re-involved after this
14 memorandum was issued. As far as taking any action against
15 anyone, I don't recall. I thought the problem -- I think now
16 I thought the problem was resolved with what was done in
17 relation to this memo.

18 Q. If you had known then that Ms. Varner had made
19 allegations of a hostile work environment, would you have
20 acted differently?

21 A. Would I have what?

22 Q. Acted differently.

23 MR. THOMAS: Objection to the form.

24 THE WITNESS: If she would have came to me and
25 told me about her problems and if I believed that they were

1 true, depending on what the nature of the problems was, I
2 might have done something more. I don't know.

3 BY MS. WALLET:

4 Q. When you left county employment in December of
5 '97, did you brief then-President Judge Hoffer on matters
6 that were still pending at the time of your retirement?

7 MS. WILLIAMS: Objection to the form. Judge
8 Sheely never testified that he was a county employee.

9 THE WITNESS: I was state employee.

10 BY MS. WALLET:

11 Q. I'm sorry?

12 A. I think I did talk --

13 MS. WILLIAMS: Maybe you can clarify --
14 hold on a second, Judge.

15 BY MS. WALLET:

16 Q. Let me just ask another question.

17 When you left the bench in December of 1997 did
18 you brief your successor on matters that were pending in the
19 Probation Office?

20 A. I don't recall if I did. I'm sure I discussed
21 with Judge Hoffer the problems involving Mr. Graham and
22 Mrs. Varner. I didn't put them in writing, but I'm certain
23 that before I left I had discussions with Judge Hoffer about
24 what these prior problems had been, because he was going to
25 have to resolve them if they come up again.

1 Q. And what do you recall telling Judge Hoffer about
2 these matters?

3 A. I don't recall any specific information I told
4 him. Whatever I was aware of at the time I'm certain I told
5 him, but I don't remember now what it was.

6 Q. Well, do you know whether Judge Hoffer had had
7 prior knowledge of the allegations of Ms. Varner?

8 A. I don't know that as a fact, but I'm certain that
9 all the judges in the county were aware that there had been
10 some problems. You know, this information spreads pretty
11 quick. I don't know that as a fact, but the other judges, I
12 know I told, discussed this with Judge Hoffer before I left.

13 Q. Do you think you discussed this with the other
14 judges in or around July of '97?

15 A. No, I'm sure I didn't discuss it with them then,
16 because I didn't discuss it with Judge Hoffer then, either,
17 I'm sure.

18 Q. And you don't recall what you told Judge Hoffer
19 when you left your employment on the bench?

20 A. No, I'm sorry, I don't recall what the specific
21 information was that I told Judge Hoffer then.

22 Q. Do you remember anything about what you told him
23 at that time?

24 A. No, I do not.

25 Q. At the time that you left in December of 1997 was

1 this Varner-Graham situation just not important to you?

2 MR. THOMAS: Objection to the form.

3 MR. ADAMS: Objection.

4 THE WITNESS: I thought that the problem had been
5 resolved because I hadn't heard anything about any further
6 problems for months. I was not aware of any other problems
7 going on when I left.

8 BY MS. WALLET:

9 Q. How long did Barbara Graham work as your court
10 stenographer?

11 A. I don't recall the dates. I think, I know when I
12 became a judge she started as my court stenographer at the
13 same time. I believe that when Barbara had children she
14 resigned for a while, I'm not -- so I don't really know how
15 many years she did work for me.

16 Q. Do you think it was years as opposed to months?

17 A. Oh, yeah. It was definitely years, I'm certain.

18 Q. And was a specific stenographer assigned to do
19 all your court work?

20 A. She did all my court work except if she couldn't
21 get it done, then we would get another court stenographer to
22 come in.

23 Q. Or if she were absent for some reason?

24 A. That's right.

25 Q. Did Ms. Graham work as your court stenographer

1 while she was pregnant?

2 A. I don't recall.

3 Q. Did you have a policy with regard to having
4 pregnant employees?

5 A. No. As far as I was concerned they could work
6 with me as long as they were able to work.

7 Q. Did you have any other employees who were
8 pregnant?

9 A. You mean in the Probation Office?

10 Q. Anywhere, sir.

11 A. I don't recall at this time whether or not any of
12 the girls were pregnant about this time or not.

13 Q. How did you learn that Gary Graham had been
14 transferred to the prison?

15 A. After I retired I used to go up to the courthouse
16 once in a while, and I don't know if Judge Hoffer -- I ran
17 into Judge Hoffer and he told me, or someone else told me,
18 but I did find out on one of my visits that Mr. Graham had
19 been transferred to the prison.

20 Q. And of course, you were gone by then so you
21 didn't play any role in that, correct?

22 A. No. I never had any knowledge of that, no. That
23 was Judge Hoffer's decision.

24 Q. Did Judge Hoffer ever consult with you about his
25 decision to transfer Mr. Graham to the prison?

1 A. No, I don't think so. I wasn't aware of this
2 until it was done. I had no knowledge of that.

3 Q. Did Judge Hoffer tell you why he had taken this
4 action?

5 A. No. I didn't ask him why. I thought that was
6 his own business. He was now the president judge, and he
7 never told me and I never asked him.

8 Q. Did Mr. Graham come to you and talk to you about
9 his transfer to the prison?

10 A. Not to my knowledge. I might have -- I might
11 have spoke to him on the phone sometimes after this had been
12 done, but he never -- I don't recall him coming to me. If he
13 did, I don't recall that. I certainly never tried to
14 intervene or anything else in this matter. I thought it was
15 Judge Hoffer's decision.

16 Q. And this phone conversation you just referenced,
17 would that have been a conversation that you initiated to
18 Mr. Graham or that he initiated to you?

19 A. No, that would be one he initiated to me.

20 Q. Do you recall why Mr. Graham told you he was
21 calling you?

22 A. I don't recall. I think at that time he was
23 thinking about maybe getting an attorney. I think that came
24 up during that conversation. But other than that, I don't
25 recall what the specifics were.

1 Q. Well, did you think it unusual that he would call
2 you after you were no longer on the bench?

3 A. No, I didn't think it was unusual. I get calls
4 from former county employees from time to time. I think the
5 purpose of the call primarily was to let me know that he was
6 thinking about getting an attorney or was going to get one,
7 that was my recollection.

8 Q. And did you give him any advice at that time?

9 A. No, I didn't give him any advice. I think what
10 he was going to do at that time would have been up to him.

11 Q. Did you express any opinions during that
12 conversation about the Varner-Graham matter?

13 A. I don't believe I expressed any opinion. I think
14 my memo had already set forth my opinion about that
15 relationship, and so what Judge Hoffer did, that was up to
16 him.

17 Q. Did you ever observe Mr. Graham relate to women
18 in less than a professional manner?

19 A. Did I ever? Not to my knowledge.

20 Q. Did any woman who worked in the Probation Office,
21 other than Ms. Varner, ever come to you to discuss Gary
22 Graham?

23 A. Not to my knowledge. If they did, I don't recall
24 it at this time.

25 Q. Whose idea was it, sir, to remove Gary Graham

1 from supervisory responsibilities over Ms. Varner?

2 A. Well, I made the decision. I don't know if
3 Mr. Osenkarski recommended that this be done or who
4 recommended it. I know I made the decision, and I thought
5 that was proper, that that would eliminate any close contact
6 the two had to have with each other. So I made the decision.
7 Whether or not it was recommended by someone else, I don't
8 recall.

9 Q. Do you remember, sir, what facts you were aware
10 of at that time that caused you to believe that removing him
11 from her supervision would be required?

12 A. Just a general involvement of the parties. I
13 felt that Mr. Graham should not be in direct relationship
14 anymore with Mrs. Varner. And I also at that time had made a
15 suspension based on improper language that Mr. Graham had
16 used toward her. I thought that that was a proper thing to
17 do.

18 Q. So you believe that the removal of the
19 supervision came in or about July of '97?

20 A. I'm sorry?

21 Q. You think the removal of the supervision by
22 Graham over Varner came in or about July of '97?

23 A. I think so. I don't recall the exact time. I
24 saw in my letter here that I -- I said here Sam Miller would
25 work with Mrs. Varner on her assignments. I think it was

1 about this time, I guess, that that took place.

2 MS. WILLIAMS: Off the record.

3 (Recess taken from 1:04 until 1:10 p.m.)

4 MS. WALLET: Judge Sheely, I have no more
5 questions.

6 BY MR. THOMAS:

7 Q. Judge, Jim Thomas. Nice to see you. I have a
8 few questions for you.

9 If I understand the hierarchy in the Probation
10 Department, judge Shughart before you was sort of the head of
11 the Probation Department. Is that fair?

12 A. That's correct.

13 Q. And you then assumed that role when you assumed
14 the position as president judge, correct?

15 A. That's correct.

16 Q. The probation officers reported directly to you?

17 A. They did to me as far as any of their cases that
18 they had, yes.

19 Q. Right. And I gather that you had the ultimate
20 say in who got hired to fill positions in the Probation
21 Department?

22 A. That's correct.

23 Q. And you had the right, if anybody had a right, to
24 fire people in the Probation Department?

25 A. I had that right and never had to use it except

1 on one occasion.

2 Q. Which you described to us earlier?

3 A. Which I described before, right.

4 Q. And with respect to the right to discipline
5 probation officers, again, that rested with you, correct?

6 A. Yes.

7 Q. There wasn't any employee of the county who had
8 the right to hire, fire, or discipline probation officers; is
9 that correct?

10 A. That's correct.

11 Q. And in fact, in this instance when you ultimately
12 decided to suspend Mr. Graham for a couple of days, for three
13 days, that was a decision that you made, correct?

14 A. That's correct.

15 Q. There was a decision to divide the Probation
16 Offices between Adult and Juvenile at the time Mr. Bolze
17 retired. Do you recall that testimony?

18 A. I do.

19 Q. And again, that was a decision I gather that you
20 made?

21 A. That's correct.

22 Q. And made it without the input or approval or
23 sanction of the employees of Cumberland County, correct?

24 A. I'm sure I discussed it with Mr. Osenkarski and
25 Mr. Roller, but I didn't need their approvals. I think I

1 discussed it with them before I did it.

2 Q. In other words, you sought their counsel in terms
3 of whether or not that made sense, but the ultimate decision
4 was yours, correct?

5 A. That is correct.

6 Q. You mentioned earlier, I think, in your testimony
7 that the county provided certain services in terms of
8 probation officers, correct? For instance, they cut the
9 paychecks, I assume, for the probation officers, right?

10 A. That's correct.

11 Q. And the salary scales were something that you
12 followed as provided by the county, correct?

13 A. We had set salary scales for our probation
14 officers, yes.

15 Q. At the time that -- and I may remember this
16 testimony incorrectly, so you correct me if I'm wrong -- if
17 the Barbara Varner was hired, I thought I heard your earlier
18 testimony to be that Mr. Graham was advocating for her hire.

19 Did I hear that correctly?

20 A. That's correct.

21 Q. What are you able to tell me about that?

22 A. All I remember, really, is that Mr. Graham was
23 recommending that she be hired in the Probation Office, that
24 she had, I think he had mentioned that she had done her job
25 well at Children and Youth. And she was then recommended by

1 Mr. Osenkarski, I guess, and I went along with their
2 recommendation.

3 Q. Do you remember anything about the relationship
4 at that point between Ms. Varner and Mr. Graham?

5 A. No.

6 (Interruption. Discussion held off the record.)

7 BY MR. THOMAS:

8 Q. Do you know why Mr. Graham was advocating on
9 behalf of Ms. Varner at that time?

10 A. No. I assumed that he had contacts with her and
11 she being in Children and Youth and he being in Probation,
12 and she thought -- he thought that she would make a good
13 probation officer.

14 Q. In hindsight following Mr. Graham's confession to
15 you about the consensual affair with Ms. Varner, does any of
16 that with the perfect vision of hindsight look any different
17 to you?

18 MS. WALLET: Objection to the form of the
19 question. Causes the witness to speculate.

20 THE WITNESS: No. Well, you mean as far as what
21 I did, I should have did something different now with
22 hindsight?

23 BY MR. THOMAS:

24 Q. No. Whether or not after the confession by
25 Mr. Graham, his advocating for her employment now causes you

1 to wonder what the nature of their relationship was at that
2 time?

3 A. I had no reason to believe that there was any
4 involvement between those two at that time. I don't know. I
5 think he had mentioned to me that there was, but I don't -- I
6 certainly had no knowledge of any relationship at the time
7 that Mrs. Varner was hired as a probation officer.

8 Q. During the period of time that Mrs. Varner worked
9 under your authority as a probation officer, are you able to
10 describe the nature of the relationship between her and
11 Mr. Graham?

12 A. I never knew that there were any problems and I
13 never saw any, so I thought they had a good relationship.

14 Q. And in fact, in your report of July 11th you
15 described them as best of friends?

16 A. That's correct.

17 Q. Is that correct?

18 A. That's correct.

19 Q. What was the basis for your characterization of
20 their relationship as best of friends, in your memo of July
21 11, '97?

22 A. I think just from seeing them around the
23 courthouse, talking, and that's how I would describe it. And
24 I know that they, you know, they had made a lot of trips to
25 take juveniles away. I'm certain they wouldn't have had to

1 do that, so I assumed that they were friends.

2 Q. Well, you obviously as their supervisor had an
3 opportunity to I gather observe their interaction with each
4 other?

5 A. Yes, um-hum.

6 Q. And you had known both of them for a substantial
7 period of time, obviously Mr. Graham longer than Ms. Varner,
8 right?

9 A. That's correct.

10 Q. But based on all of those observations, you
11 characterized their relationship as best of friends in your
12 memo of July 11, right?

13 A. That's what I thought, yes.

14 Q. Now, you were asked a number of questions by
15 plaintiff's counsel about the nature of the relationship
16 between Mr. Osenkarski and Mr. Graham, and I think described
17 them as friends, also, correct?

18 A. I was under the opinion that they were friends,
19 yes.

20 Q. And did that apply equally to the relationship
21 between Gary Graham and Barbara Varner as between Osenkarski
22 and Graham?

23 A. I think so.

24 Q. When was the first time that you realized that
25 this relationship which you characterized as best of friends

1 had deteriorated?

2 A. I think it's when Mr. Deluce came in to me and
3 told me about the, apparently Mr. Hartnett who was the
4 personnel director had, when he got the letter from
5 Mrs. Varner, when Mr. Hartnett had contacted Mr. Deluce. And
6 then Mr. Deluce came in and told me about this. To my
7 recollection, that was the first time.

8 Q. Were you surprised that your first notice of any
9 problem came from Mr. Deluce?

10 A. Yes, I think I was surprised. I would have hoped
11 otherwise, as I mentioned before, I would have hoped that
12 Mrs. Varner would have come to me before she went to
13 Mr. Hartnett.

14 Q. You testified earlier that, in fact, you would
15 have expected her to come to you with any type of complaints
16 or problems; is that correct?

17 A. Of this nature I would have thought she would
18 have, yes.

19 Q. Was that because from your relationship with your
20 probation officers you believed that they saw you as the
21 person to go to with problems?

22 A. Yes, I would have hoped that, if they couldn't
23 get them resolved with their direct superiors, that they
24 would come to me, yes.

25 Q. And they did see you as their immediate superior?

1 A. I think they did.

2 Q. And you would have expected her to come to you
3 with a problem of this nature and explain it to you to see if
4 it couldn't be solved; is that accurate?

5 A. I would have expected that, yes.

6 Q. And she never did that, I gather?

7 A. No.

8 Q. Did you have occasions to meet with probation
9 officers about problems, either interpersonal problems or
10 problems in the department?

11 A. Not very often. I don't recall. I don't recall.
12 I'm certain that if there would have been any, they certainly
13 could have come and talked to me about it. Usually I think
14 problems got resolved in the department with their
15 supervisors.

16 Q. So if I understand correctly, as far as you were
17 aware, these two were friends, as other people in the
18 department were, and suddenly in June sometime Mr. Deluce
19 shows up in your office and tells you there's a problem,
20 correct?

21 A. That's what happened to me, yes.

22 Q. And that was the first time you were aware that
23 there was a particular problem between those two, right?

24 A. That's correct.

25 Q. As a result of your meeting with Mr. Deluce,

1 apparently you made the decision or at least a tentative
2 decision to take certain action, right?

3 A. Yes. And that might have been discussions with
4 other people, Mr. Osenkowski and other people.

5 Q. And at some time you made the decision to
6 transfer Mr. Graham, correct?

7 A. I had thought about doing that, yes.

8 Q. And it was at about this time that Mr. Graham and
9 Mrs. Graham showed up in your office and Mr. Graham confessed
10 to the consensual affair with Ms. Varner, correct?

11 A. It was, their coming in was after I had
12 previously thought about making the decision to transfer
13 Mr. Graham.

14 Q. All right. So if I got the sequence correct,
15 Mr. Deluce shows up, you may have talked to Mr. Osenkowski
16 and some others, you think, about transferring Mr. Graham,
17 and then Mr. Graham and Mrs. Graham show up and have the
18 confession with you, correct?

19 A. That's correct.

20 Q. And if I understand your testimony, your earlier
21 testimony correctly, and again, you correct me if I'm wrong,
22 sort of at that point or shortly thereafter, the fact that
23 the consensual affair had occurred changed your judgment
24 about what punishment, if any, was appropriate, correct?

25 A. That's correct.

1 Q. I gather that you believed that the affair
2 occurred?

3 MS. WALLET: Objection. What you gather isn't
4 relevant.

5 BY MR. THOMAS:

6 Q. Did you believe that the affair occurred?

7 A. I believed that it did, yes.

8 Q. And did you reach that conclusion based on your
9 long-standing occupation of judge and of judging credibility
10 of people?

11 A. That, and I think I already mentioned the fact
12 that being a man, that for a man to come before another
13 party, his boss, with his wife present, and admit that he had
14 been having an affair with someone else. You know, men don't
15 do that usually unless there's some reason, and I didn't know
16 of any reason why he would come in and do that. So I did
17 believe him, yes.

18 Q. There was also a substantial change in the nature
19 of the relationship between those two, was there not?

20 A. Apparently so. You know, I wasn't aware of this,
21 and maybe it had been going on for a while down in their
22 office, that there had been a change. I wasn't aware of that
23 until I got the interview with Mr. Deluce.

24 Q. So what you had was the appearance that they made
25 to you, you had the fact that he confessed to you in the

1 presence of his wife, and you had a very dramatic change in
2 the nature of the relationship between the two of them,
3 correct?

4 A. That's correct.

5 Q. And those things all led you to believe that the
6 affair had, in fact, occurred?

7 A. I believed it, yes.

8 Q. And as a result of that, you decided that your
9 original punishment, for lack of a better term, was too harsh
10 under the circumstances, correct?

11 A. That's correct. That's the reason.

12 Q. And you didn't think it was appropriate under
13 these circumstances where a consensual affair had occurred,
14 to single out Mr. Graham for punishment, right?

15 A. That's what I thought, yes.

16 Q. And I assume the fact that Mrs. Graham was there
17 and you saw the amount of emotion involved, may have also had
18 some impact on your decision-making process?

19 A. I saw what the emotion occurred, right.

20 Q. And you knew from your job as a judge what
21 happens with families in divorce and separation, as you
22 testified earlier, correct?

23 A. That's correct.

24 Q. Is it possible that you received recommendations
25 either from Mr. Osenkowski or others with respect to what

1 punishment was appropriate for Mr. Graham under the
2 circumstances?

3 A. It's possible. I don't --

4 Q. Do you recall anybody recommending -- I'm sorry,
5 Judge, were you done?

6 A. Yeah, I was done.

7 Q. Do you recall anybody recommending that
8 Mr. Graham should be terminated or fired?

9 A. Not terminated or fired. I'm sure I got some
10 recommendations from Mr. Osenkarski, you know, about the
11 appropriateness of the three-day suspension and removing
12 Mr. Graham as a direct supervisor of Mrs. Varner.

13 Q. The decision ultimately to suspend him was your
14 decision?

15 A. Yes, that was my decision.

16 Q. The punishment that you imposed as I understand
17 your memo of July 11 was that you suspended him without pay,
18 at least pursuant to your order, without pay for three days,
19 right?

20 A. That's correct.

21 Q. And you removed any supervisory responsibilities
22 with respect to Barbara Varner from Mr. Graham, right?

23 A. That's correct.

24 Q. But you did something else in your memo of July
25 11 in the last sentence, did you not? Do you have that in

1 front of you? And actually the last two sentences. Let me
2 read them to you: I direct his supervisor, Mr. Osenkarski,
3 to pay better attention to matters taking place in the
4 office. I will take more severe action if conduct of any
5 employee warrants it.

6 So in addition to the two things you did with
7 respect to Mr. Graham, you also told Mr. Osenkarski to pay
8 more attention, correct?

9 A. That's correct.

10 Q. And you also said that if there are other
11 activities or actions that warrant it, you would implement
12 more severe action, right?

13 A. That's what I said.

14 Q. Plaintiff's counsel asked you a number of
15 questions, your Honor, about your prior knowledge and
16 experience with Mr. Graham's parents.

17 A. Right.

18 Q. Do you recall that testimony?

19 A. Yes, I do.

20 Q. Did the fact that you knew Gary Graham's father
21 or that he may have been a committee man from Newville in any
22 way influence your decision about what remedial action was
23 appropriate here?

24 A. No, it did not.

25 Q. How about the fact that you knew his mother and

1 that you apparently her visited with her during a period of
2 illness, did that in any way affect your decision or judgment
3 in terms of what action was appropriate here?

4 A. No, I don't think so. Not that I recall. I of
5 course knew them for a long time, they were my friends. I
6 was politically involved when I was running for DA, but after
7 I became a judge I had no more political involvements with
8 Mr. Graham's father or mother. Just a friendship, that's all
9 it was.

10 Q. Plaintiff's counsel showed you a copy of a letter
11 dated July 8th to you from Dan Hartnett. Do you have that in
12 front of you?

13 A. I have it right in front of me, yes.

14 Q. It relates to Mr. Osenkowski, at least in part,
15 right?

16 A. It does, yes.

17 Q. It says: We are in agreement with your position
18 involving a suspension of Mr. Osenkowski.

19 Did you ever recommend or suggest a suspension of
20 Mr. Osenkowski?

21 A. That's what I said, I do not ever recall making a
22 recommendation to Mr. Hartnett that Mr. Osenkowski be
23 suspended. I don't ever recall making such a statement, and
24 I'm not really sure at this point in the proceedings, either,
25 why I would do that.

1 Q. The decision about what to do with
2 Mr. Osenkarski, if anything, was exclusively yours, was it
3 not?

4 A. It would have been, yes.

5 Q. Mr. Hartnett could not have suspended
6 Mr. Osenkarski, could he?

7 A. No, he could not have suspended him.

8 Q. Nor could he have suspended or terminated
9 Mr. Graham, correct?

10 A. That's correct.

11 MR. THOMAS: That's all I have, Judge. Thank
12 you.

13 BY MR. MacMAIN:

14 Q. Good afternoon, your Honor. My name is David
15 MacMain and I represent Mr. Graham, and we'll possibly make
16 eye contact here if people move back and forth. I have just
17 a few follow-ups on what's been covered already.

18 You had said that you frequently made visits to
19 the Probation Office?

20 A. Very often, yes.

21 Q. At any point did you ever observe any kind of
22 conduct from Mr. Graham that you considered inappropriate?

23 A. No. I didn't observe it, no.

24 Q. Did you ever hear any conduct or hear any words
25 or language or tone of voice while you were in the Probation

1 Office from Mr. Graham that you thought was inappropriate?

2 A. No, I did not hear that from him.

3 Q. Did Ms. Varner at any point prior to your meeting
4 with Mr. Deluce ever come to you and make any complaints
5 whatsoever about Mr. Graham?

6 A. Not to my knowledge.

7 Q. Did anyone on her behalf ever make any complaints
8 about Mr. Graham prior to your meeting with Mr. Deluce?

9 A. Not to my knowledge. I don't recall any.

10 Q. You were asked, and I'm going to be brief, about
11 the meeting you had with Mr. Graham and his wife in your
12 office in which this affair was confessed to you, correct?

13 A. That's correct.

14 Q. And you were already asked a number of questions
15 as to whether you believed that, in fact, it was true and you
16 believed Mr. Graham's confession, correct?

17 A. That's correct.

18 Q. It's been suggested at prior depositions,
19 including by Ms. Varner, that you were aware that there was
20 no affair and you kind of looked the other way because of
21 your friendship or like of the Grahams. Is that true?

22 A. Would you ask me that question again?

23 Q. Sure. It's been suggested by Ms. Varner in her
24 deposition that when this confession was made to you, you
25 knew it not to be true, yet kind of played along, anyhow,

1 because you liked Mrs. Graham and felt sorry for her. Is
2 that true?

3 A. No. I thought it was true for the reasons I've
4 said. Now, whether -- I thought it was true.

5 Q. You said you were told that the relationship had
6 been terminated, it ended, right?

7 A. That's what I was told, yes.

8 Q. Did Mr. Graham say who ended it?

9 A. I think he said he did, but -- I think that's my
10 recollection. He didn't say how. I don't recall him saying
11 how it ended or exactly when it ended, I think he just said
12 it was ended.

13 Q. I'm going to ask you some questions about what
14 was marked as Sheely 1, which was your July 11, '97, memo.

15 A. Okay.

16 Q. And I'm turning to the second page in the last
17 paragraph. It has: I have never spoken to Ms. Varner about
18 the allegations until today.

19 Do you recall speaking to Ms. Varner on July
20 11th, 1997?

21 A. I don't specifically recall it, but obviously I
22 did or I wouldn't have put that in there.

23 Q. You don't recall any specifics about what was
24 said or what was discussed?

25 A. No, I don't.

1 Q. Do you know whether or not you would have asked
2 her about this affair that Mr. Graham had told you about a
3 couple of days earlier?

4 MS. WALLET: Objection. He already said he
5 doesn't recall.

6 MS. WILLIAMS: You can answer, Judge.

7 THE WITNESS: I don't recall this conversation.
8 I certainly never asked Mrs. Varner to come in and talk to me
9 about this. If we had a conversation some other place or in
10 the hall or something, it's possible, but I don't recall it
11 taking place.

12 BY MR. MacMAIN:

13 Q. On the third and final page there's a carbon copy
14 of your memo to a number of people.

15 A. Yes.

16 Q. One of the carbon copies is to Debra Wallet,
17 Ms. Varner's attorney?

18 A. Yes.

19 Q. Did you ever receive any type of letter following
20 your memo from Ms. Wallet?

21 A. I don't recall of ever receiving one.

22 Q. Did you ever receive any kind of phone call from
23 Ms. Wallet following your July 17th memo?

24 A. I don't recall today, no.

25 Q. Did you ever receive any type of phone call or

1 letter from Ms. Varner following your July 11th, '97, letter?

2 A. No, I don't recall of any.

3 Q. Judge, do you recall anybody, either Ms. Varner
4 or anybody on her behalf, I guess, firing back or responding
5 to your July 11th, '97, memo that something was incorrect in
6 there?

7 A. I don't recall of any, no.

8 Q. You had said earlier that Mr. Graham on occasion
9 like anyone else can be excitable. Do you remember stating
10 that?

11 A. That's what I recall, yes.

12 Q. At any point did you ever find him to be
13 inappropriately excitable?

14 A. As of now, no, I don't recall that he was
15 inappropriately excitable. I don't even remember anymore
16 what the excitement was about. I know that occasionally it
17 did take place.

18 Q. You had also mentioned that you were aware or
19 been told that Mr. Graham on occasion was loud.

20 A. Yes, I was.

21 Q. At any point did you ever observe or were you
22 told that he was inappropriately loud?

23 A. No, I don't recall what the situations were that
24 led to that.

25 MR. MacMAIN: That's all the questions I have.

1 Thank you.

2 MR. ADAMS: 10 seconds.

3 MS. WILLIAMS: Can we go off the record for a
4 second?

5 BY MR. ADAMS:

6 Q. Good afternoon, your Honor. Again, I represent
7 Mr. Osenkowski. I have a few more questions and hopefully
8 we'll be done.

9 As a follow-up to Mr. MacMain's questions of your
10 visits to the Probation Department, I want ask you, did you
11 ever observe any conduct by Mr. Osenkowski which you deemed
12 inappropriate upon your visits to the Probation Department?

13 A. No, I never observed this.

14 Q. Did you ever observe any language which you felt
15 was considered sexually explicit by Mr. Osenkowski while
16 visiting that department?

17 A. No, not while I was there.

18 Q. And did you ever observe any language from
19 Mr. Osenkowski which you just felt was inappropriate at all,
20 any language at all, your Honor?

21 A. No, I don't -- I can't recall any.

22 Q. Okay. How well did you know Mr. Osenkowski?

23 A. Well, like I said, I started, I was a DA from '68
24 to '76, and I believe Mr. Osenkowski was employed by the
25 county back in those days. So I knew him very well.

1 Q. Are you two friends?

2 A. We never went out socially or anything, but
3 professionally we were good friends.

4 Q. Other than the courthouse, therefore, you
5 wouldn't see him other than in a courthouse setting?

6 A. I don't recall ever being in his presence outside
7 of any courthouse function.

8 Q. This is going to be a different question for you,
9 but did you conspire in any way with Mr. Osenkarski to cover
10 up, hide, not disclose, any allegation of discrimination made
11 by Ms. Varner?

12 A. No. I never agreed with them to do anything
13 concerning those allegations.

14 Q. Okay. And you certainly -- did you conspire in
15 any way with Mr. Osenkarski to discriminate against
16 Ms. Varner in any way that you can think of at all?

17 A. I never did, no.

18 Q. How about Mr. Graham? Did you ever conspire with
19 Mr. Graham to --

20 A. No.

21 Q. -- try to refute any allegations by Ms. Varner?

22 A. No.

23 MR. ADAMS: Thank you, your Honor.

24 MS. WILLIAMS: Are there anymore questions?

25 MS. WALLET: Yes, I have a few.

1 BY MS. WALLET:

2 Q. Judge Sheely, you said that you never saw
3 Mr. Osenkarski in a setting outside of work.

4 A. Basically, I don't recall of any. It's possible.

5 Q. Did you ever see Mr. Graham on occasions outside
6 of work?

7 A. I saw -- I think I was present when he was
8 married. They got married in a Catholic church over in
9 Penbrook somewhere, I saw him then. But I don't -- I don't
10 recall if I ever went to his home or anything after that or
11 not. It's possible I did, but I don't recall.

12 Q. Were you a guest at the wedding, sir, or did you
13 perform the marriage ceremony?

14 A. No, this was done in the church.

15 Q. You were a guest?

16 A. I was just a guest, yes.

17 Q. Were both you and your wife invited to the
18 wedding?

19 A. Yes, we were.

20 Q. Do you recall any other times when you saw
21 Mr. Graham outside the work setting?

22 A. I don't recall any. I wouldn't say there weren't
23 any, but at this point I don't recall any.

24 Q. Did you attend Mr. Graham's mother's funeral?

25 A. Her funeral? I don't recall if we did or not, to

1 tell the truth. I think maybe we might have went to the
2 viewing. I don't recall going to the funeral.

3 Q. How about his father's funeral or viewing?

4 A. I don't recall going to the funeral. There
5 again, I'm sure we would have went to the viewing.

6 Q. When you say we, you're saying --

7 A. My wife and I.

8 Q. -- you and your wife.

9 You said that you would make visits to the
10 Probation Office. How frequently would you say that you
11 visited the Probation Office?

12 A. It's hard to say. You know, I would say
13 generally several times a week I'd go down. Maybe more if
14 there was some reason for me to go. But usually it was
15 several times a week.

16 Q. And would this be your going to deliver something
17 or pick up something, or to talk with someone?

18 A. No. Usually it was just going down to talk to
19 somebody about something. I don't recall picking up things
20 from these visits.

21 Q. Would you say these visits were short visits,
22 long visits?

23 A. No, I think they were more short visits. I know
24 I used to talk to Mr. Osenkowski about deer hunting. We used
25 to talk -- he liked to go deer hunting and so did I, I know

1 we used to talk about that on occasions. Sometimes business,
2 sometimes just things like that.

3 Q. Would this depend on whether or not it was court
4 week or something other than court week?

5 A. It would depend on whether or not I was involved
6 in any court proceedings, obviously. I wouldn't stop then to
7 go down there and talk.

8 Q. Is it accurate to say that during court week you
9 wouldn't be spending much time in the Probation Office?

10 A. That's correct. I wasn't down there at all
11 hardly in court weeks.

12 Q. That's basically one week out of the month?

13 A. Well, some months we had court for about three or
14 four weeks straight. So during that period of time I
15 possibly wouldn't be down hardly at all. I would still do
16 the emergency juveniles at that time, but it didn't require
17 me going down to the Probation Office.

18 Q. Do you know whether Mr. Graham recommended any
19 other individuals for employment in the Probation Office?

20 A. I don't recall.

21 Q. Is it possible that he did?

22 A. It's possible.

23 Q. Who would you say were better friends, Osenkarski
24 and Graham, or Graham and Varner?

25 A. I didn't know anything about this relationship

1 between Barbara and Gary, so I can't say anything about their
2 friendship then because I didn't know about it.

3 I would say generally, probably, that better
4 friends probably from what I observed were Mr. Osenkowski
5 rather than Mrs. Varner.

6 Q. It's been a long day, excuse me, but did you tell
7 me that you did not know at the time that you wrote the July
8 11, 1997, memo marked Sheely 1 that Ms. Varner had made
9 allegations against Mr. Osenkowski as well?

10 MR. THOMAS: Objection to form.

11 THE WITNESS: I knew about these allegations when
12 I met with Mr. Deluce, and that would have been prior to the
13 July 11th memo. I'm not sure when that was.

14 BY MS. WALLET:

15 Q. Prior to July 11, 1997, did you know that
16 Ms. Varner had made allegations of inappropriate activities
17 against Mr. Osenkowski?

18 A. Yes, I think I knew that. I think the county
19 solicitor when he came in to see me set forth that there were
20 allegations made.

21 MS. WILLIAMS: I'm going to stop you there,
22 Judge. We have a running objection as to anything involving
23 your conversation with Mr. Deluce.

24 THE WITNESS: You tell me when I'm not supposed
25 to.

1 BY MS. WALLET:

2 Q. You knew that Ms. Varner and Mr. Graham went on
3 commitment trips together?

4 A. That's right.

5 Q. How did you know that?

6 A. Sometimes I would be told who transported
7 juveniles. Sometimes we would make a finding of they were
8 delinquent and they would go right after I made that finding
9 and I would know then usually who was going to take them out
10 there and when they were going to go.

11 Q. Did you know that it was Mr. Graham who made the
12 assignments of who went on those trips?

13 A. Yeah, I would think --

14 MR. MacMAIN: Objection.

15 MS. WILLIAMS: Objection to the form.

16 THE WITNESS: I would think that between
17 Mr. Graham and Ms. Varner, he made the assignment. He was
18 her supervisor back in those times. I don't think she made
19 the decision.

20 MS. WALLET: Thank you. That's all I have.

21 MS. WILLIAMS: Any other questions?

22 MR. THOMAS: No.

23 MS. WILLIAMS: For the record, perhaps we should
24 have stated in the beginning that we had agreed to the usual
25 stipulations, except that I would not waive reading and

1 signing and would like the judge to have an opportunity to
2 read and sign his deposition.

3 MS. WALLET: That's acceptable.

4 (Whereupon, the deposition was concluded at
5 1:48 p.m.)

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1 COMMONWEALTH OF PENNSYLVANIA)
2)
3 COUNTY OF DAUPHIN)

4 I, Emily R. Clark, a Court Reporter-Notary Public
5 authorized to administer oaths and take depositions in the
6 trial of causes, and having an office in Harrisburg,
7 Pennsylvania, do hereby certify that the foregoing is the
8 testimony of HON. HAROLD E. SHEELY taken by Plaintiff at the
9 Administrative Offices of Pennsylvania Courts, 5035 Ritter
Road, Mechanicsburg, Pennsylvania.

10 I further certify that before the taking of said
11 deposition the witness was duly sworn; that the questions and
12 answers were taken down in stenotype by the said
13 Reporter-Notary, approved and agreed to, and afterwards
14 reduced to computer printout under the direction of said
15 Reporter.

16 I further certify that the proceedings and
17 evidence are contained fully and accurately in the notes
18 taken by me on the within deposition, and that this copy is a
19 correct transcript of the same.

20 In testimony whereof, I have hereunto subscribed
21 my hand this 17th day of March, 2003.

22
23
24
25

Notary Public